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IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of decision: 14.12.2018

+ ARB.P. 13/2018

R.D.CONSTRUCTION

..... Petitioner

Through Mr. Manjit Singh Ahluwalia, Adv.

versus

THE GENERAL MANAGER NORTHERN
RAILWAY & ORS.

..... Respondents

Through Mr. Amitava Poddar, Adv.

CORAM:

HON'BLE MR. JUSTICE RAJIV SHAKDHER

RAJIV SHAKDHER, J.: (ORAL)

1 This is a petition under Section 11 of the Arbitration and Conciliation Act, 1996 (in short '1996 Act').

2 Notice in this petition was issued on 28.02.2018. Since then, the respondent has filed a reply to the petition. Based on the averments made in the reply, learned counsel for the respondent argued that the petitioner did not execute the job which was assigned to him under the subject contract.

2.1 Furthermore, it is claimed under Clause 4 of the Special Conditions of Contract that the petitioner is required to bear the burden of taxes.

2.2 On being queried, learned counsel for the respondent does not

dispute the fact that an arbitration agreement obtains between the parties.

3 The record shows that the respondent had floated a tender in July, 2014 for supplying, stacking and loading of 60,000 (Sixty thousand) cum 65 mm gauge stone Machine crushed into Railway Wagon including all Leads & Lift at ballast Sub Depot 4 at Tuglakabad (hereafter referred to as 'subject works') The total consideration for the subject works was fixed at Rs.6,27,60,000/-.

4 The petitioner, evidently, submitted the bid qua the subject works which resulted in the petitioner being declared successful.

5 It is the petitioner's case that there was a delay in execution of the works as the work site was given to it after a delay of 8 months and 22 days.

6 The petitioner claims that on account of the delay in handing over the site and intervention of monsoon etcetra the execution of the work was disrupted.

6.1 It is, however, averred by the petitioner that despite this hardship, it was able to supply 6617 cum by 09.11.2015 i.e. 11% of the contracted quantity and that it had targeted that the work would be completed by 28.06.2016.

7 The petitioner also claims that between November and December, 2015, it had to pay Environment Compensation Charge (in short 'ECC'). Directions in that behalf were issued by the Supreme Court. According to the petitioner, this resulted in the price of transportation being enhanced.

8 The petitioner claims that despite all these difficulties, it

continued with the work though a demand was raised in terms of Clause 4 of the Special Conditions of Contract on 04.07.2016 for payment of ECC by the petitioner.

9 In sum, the petitioner asserts that the dispute with the respondent is with regard to claims which have arisen on account of delay in handing over the work site and the burden of ECC it had to bear for transportation of the contracted material.

9.1 The petitioner claims that these aspects were brought to fore in the notice dated 08.09.2017.

10 Furthermore, it is averred that request was made to the respondents to appoint an Arbitrator in view of the disputes having erupted in terms of clause 64 of the general terms and conditions of the subject contract.

11 It appears that the respondents, via communication dated 27.11.2017, responded to the aforementioned notice and called upon the petitioner to indicate clearly as to the claims that are to be adjudicated upon. It appears that the aforementioned communication was followed by a reminder dated 23.02.2018.

12 It is in these circumstances that the petitioner has approached the Court.

13 Learned counsel for the parties have argued in line with the pleadings filed in the matter.

13.1 Mr. Amitava Poddar, who, appears for the respondents, during the course of arguments, made three submissions:

- (i) First, the petitioner never completed the work assigned to it under the subject contract.

(ii) Second, under Clause 4 of the Special Conditions of Contract, ECC is required to be paid by the petitioner.

(iii) Third, since the claims to be adjudicated were not delineated in the request for appointment of an Arbitrator the respondents did not accede to the request.

14 Mr. Ahluwalia contends to the contrary.

15 I have heard learned counsel for the parties and perused the record.

16 According to me, the first two submissions made by the learned counsel for the respondents relate to the merits of the case. As to whether or not, the petitioner completed the work assigned under the contract and as contended on behalf of the respondents that the burden of ECC is to be borne by the petitioner, are aspects which are not to be examined in a Section 11 petition.

17 Insofar as the third contention is concerned, which is that the respondents did not appoint an Arbitrator as in the notice triggering the arbitration agreement, there was no articulation of the claims, which had to be adjudicated, in my view, is a defence which is not made out. The simple reason why I have reached this calculation is that a perusal of the notice would show that the petitioner has, in fact, articulated what its grievance was. A perusal of the request would demonstrate clearly as to what were the legal claims of the petitioner, if the matter was referred to the Arbitrator. Therefore, the contention raised by the respondents that the demand for arbitration did not specify the matter qua which the disputes had arisen, in my view, is not tenable.

18 Therefore, having regard to the aforesaid, I am inclined to allow the petition. Accordingly, Mr. Lal Singh, former Additional District Judge (Mobile No.9910384617), is appointed as an Arbitrator in the matter. Learned Arbitrator will be paid his fee as per the provisions of the Fourth Schedule appended to the 1996 Act. The petition filed under Section 9 will be placed before the learned Arbitrator, who will treat the same as an application under Section 17 of the 1996 Act. Learned Arbitrator will rule on the application after giving opportunity to both sides.

19 The petition is disposed of in the aforesaid terms.

RAJIV SHAKDHER
(JUDGE)

DECEMBER 14, 2018

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