

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Judgment reserved on: 25.10.2018
Judgment pronounced on: 08.02.2019

+ ARB.P. 356/2018

NCC LIMITED

..... Petitioner

Through Dr. Amit George, Mr. Rishabh Dheer,
Mr. Swaroop George, Mr. K. Dileep
and Ms. Rajsree Ajay, Advs.

versus

INDIAN OIL CORPORATION LIMITED

..... Respondent

Through Mr. V.N. Koura with Mr. Nikhil
Mundeja, Adv.

CORAM:

HON'BLE MR. JUSTICE RAJIV SHAKDHER

RAJIV SHAKDHER, J.

1. The captioned petition is part of a batch of petitions which raised a common issue. Counsel for the parties addressed arguments in the lead petition which is numbered as ARB. P. No.115/2018. I have already rendered my decision today i.e. 8.2.2019 in ARB. P. No.115/2018. It is common ground of counsel that broadly the facts obtaining in the captioned petition are same as those which obtain in ARB. P. No.115/2018.

2. Except for the dates of important correspondence exchanged between the parties the stand taken by both of them remains the same. As noticed in ARB. P. No.115/2018 the petitioner i.e. NCC Ltd. (in short "NCCL") takes the position that the claims lodged which Notified Claims and that they ought to be referred for adjudication to the Arbitral Tribunal.

2.1 On the other hand, the respondent i.e. Indian Oil Corporation Ltd. (in short "IOCL") takes the stand that the determination by the General

Manager as to whether or not the claims lodged by NCCL is final. In other words, according to IOCL once the General Manager rules that the claims lodge by a Contractor (in this case NCCL) are not Notified Claims then no reference need to be made to the Arbitral Tribunal.

3. In the judgment rendered in ARB. P. No.115/2018 after considering the arguments of both sides and analyzing the documents placed before me, I have summed up my conclusions as follows: -

“I) Where there is contestation to the decision rendered by the General Manager is argumentative in nature the issue as to whether the claims lodged by a Contractor can be categorized as Notified Claims is best left to the Arbitral Tribunal. In other words, except for the situation where there is no doubt that the claims were not lodged with the Engineer and the Site Engineer as required under Clause 6.6.1.0 read with 6.6.3.0, the matter would have to be left for resolution by Arbitral Tribunal.

II) Aspects with regard to accordance satisfaction of the claims made where there is a dispute will also have to be left to the Arbitral Tribunal. The position in law in this regard remains the same both pre and post amendment brought about in the 1996 Act after 23.10.2015.

III) After the insertion of Section 11(6A) in the 1996 Act the scope of inquiry by the Court in a Section 11 petition, (once it is satisfied that it has jurisdiction in the matter) is confined to ascertaining as to whether or not an arbitration agreement existence between the parties before it which is relatable to the disputes at hand in relating the disputes to the arbitration existence.

IV) The exercise with regard to curating the dispute at hand with the arbitration agreement is very narrow in scope and ambit. Thus, except for an open and shut case which points in the direction of a particular dispute not it falling within the four corners of the arbitration agreement obtaining between the parties the matter would have to be resolved by an Arbitral Tribunal where there is contest on this score.”

4. In so far as the captioned petition is concerned, the following dates and events are required to be noticed:

4.1 Parties executed a contract qua the subject project on 25.06.2010. The final bill with regard to the work executed by the NCCL was submitted on 25.6.2016. The arbitration agreement was invoked by NCCL on 23.02.2018. Strangely in this case IOCL did not refer the request made by NCCL to its General Manager, resultantly, there has been no determination by the General Manager. The instant petition was, though, lodged on 10.01.2018.

5. Therefore, this petition in any event would have to be allowed. Even otherwise, to my mind it is covered by the judgment rendered in ARB. P. No.115/2018.

6. It is ordered accordingly.

7. Resultantly, Hon'ble Mr. Justice Madan B. Lokur (Cell no: 9868219007), former Judge, Supreme Court of India is appointed as an Arbitrator in the matters. The learned Arbitrator's fees will be governed by the provisions of Fourth Schedule appended to the 1996 Act. Before entering upon reference, the learned Arbitrator will file a declaration as required under Section 12 and other attendant provisions of the 1996 Act.

8. It is, however, made clear that the parties will bear their own costs.

9. The Registry will dispatch a copy of the order to the learned Arbitrator.

RAJIV SHAKDHER
(JUDGE)

FEBRUARY 8, 2019/rb