

\$~9

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ O.M.P. (T) (COMM.) 98/2018
OM VAJRAKAYA CONSTRUCTION CO Petitioner
Through Mr. S.W. Haider, Adv.

versus

UNION OF INDIA Respondent
Through Mr. Jagjit Singh, Sr. Standing
Counsel with Mr. Vipin Chaudhary,
Adv.

CORAM:

HON'BLE MR. JUSTICE RAJIV SHAKDHER

ORDER

% **11.03.2019**

1. This is a petition filed under Sections 14 and 15 the Arbitration and Conciliation Act, 1996 (for short '1996 Act').
2. The substantive prayer made in the petition is as follows:
“a) terminate the mandate of the Arbitral Tribunal constituted by the respondent vide its letter dated 28.12.2016 and refer those claims as mentioned therein also before Hon'ble Mr. Justice H. R. Malhotra (Retired) who is already seized of the matter to adjudicate the other claims of the petitioner arising out of the same contract.”
3. This petition came up for hearing on 19.9.2018. On that date, for some reason, the petitioner was not represented. However, since advance notice had been given to the respondent, Mr. Singh, learned Senior Standing counsel, put in appearance on behalf of the respondent.
4. Given the fact that the petitioner was not represented, adverse orders were deferred and the matter was directed to be re-listed on 17.12.2018.

5. On 17.12.2018, a formal notice was issued to the respondent. Mr. Singh, on that date, sought four (4) weeks to file a reply.
6. To date, no reply has been filed by the respondent.
7. To my mind, no further time can be granted, given the facts and circumstances obtaining in the matter. Pertinently, arbitration proceeding has been on hold for nearly two years. The reason as to why this happened is evident from the broad narrative given hereafter.
8. It is the case of the petitioner that the Arbitral Tribunal was constituted on 28.12.2016.
9. The petitioner was, however, aggrieved by the fact that only a part of these claims have been referred to the Arbitral Tribunal.
10. Being aggrieved, the petitioner moved this Court via ARB. P. No. 191/2017.
11. This Court vide order dated 13.9.2017, appointed Hon'ble Mr. Justice H.R. Malhotra, former Judge of this Court, as an Arbitrator with regard to the remaining claims which were eight (8) in number.
12. Insofar as the subject matter is concerned, the Arbitral Tribunal which comprises nominees of each of the parties and a Presiding Arbitrator, as it appears, has held only one hearing since its constitution.
13. According to the petitioner, the one and only hearing which was held by the Arbitral Tribunal was on 22.3.2017.
14. Given these circumstances, I would have expected the respondent to act with alacrity and to inform the Court by way of a formal reply as to why the Arbitral Tribunal had taken no steps in the matter since 22.3.2017.
15. Unfortunately, there has been procrastination on the part of the

respondent.

16. As indicated above, despite the fact that more than five (5) months have passed, no reply has been filed by the respondent.

17. In these circumstances, I am inclined to allow the petition.

18. The mandate of the Arbitral Tribunal is terminated as it has failed to act with due expedition. Since, Hon'ble Mr. Justice H.R. Malhotra is already seized of some of the claims raised by the petitioner, I am inclined to appoint him as an Arbitrator in this matter as well qua claims which are subject matter of instant proceedings for the sake of expediency and consistency.

19. It is ordered accordingly.

20. Given the fact that the earlier arbitration proceedings were held under the aegis of the Delhi International Arbitration Centre (for short 'DIAC'), in respect of the subject claims as well, a similar direction is issued.

21. Therefore, the rules which are applicable to the proceedings conducted under the aegis of DIAC would apply to the subject proceedings as well.

22. The petition is disposed of with the aforesaid directions.

23. The Registry is directed to despatch a copy of the order passed today to the learned Arbitrator as well as the Co-ordinator, DIAC.

24. *Dasti.*

RAJIV SHAKDHER, J.

MARCH 11, 2019

Rb/VKR

O.M.P. (T) (COMM.) 98/2018

Page 3 of 3