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IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of Decision: 7.1.2019

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ARB.P. 717/2018

PATEL- GAMMON JOINT VENTURE

..... Petitioner

Through Mr. Shankh Sengupta and Mr. Mohit
Rohtagi, Advs.

versus

SATLUJ JAL VIDYUT NIGAM LIMITED & ANR.

..... Respondents

Through Mr. Krishan Kumar Upadhyay, Adv
for R-1.

Ms. Monika Arora, CGSC with Mr.
Harish Ahuja, Adv for R-2/UOI.

CORAM:

HON'BLE MR. JUSTICE RAJIV SHAKDHER

RAJIV SHAKDHER, J. (ORAL)

1 Notice in this petition was issued as far as back on 25.09.2018. On that date, respondent No.2/UOI was represented by Ms. Monika Arora, CGSC. Pertinently, on 25.09.2018, no objection with regard to the jurisdiction of this Court was taken. Thereafter, the matter was listed before the Court on 18.12.2018. On that date as well, both respondent No.1 as also respondent No.2/UOI were represented. On this date, counsel for respondent No.1 sought and was granted two weeks to file a reply.

1.1 To be noted, respondent No.2/UOI had not filed its reply even till that date. The position is no different even today.

2 Mr. Upadhyay, who, appears for respondent No.1, says that the reply is ready and shall be filed shortly.

3 In my view, on a Section 11 petition, the respondents cannot be given interminable opportunities. The purpose of arbitration is to have expeditious adjudication of disputes. Therefore, the request for grant of further time is declined.

3.1 However, based on the record as it obtains, Mr. Upadhyay's objection with respect to lack of jurisdiction is heard.

4 It is Mr. Upadhyay's submission that only the Courts in the State of Himachal Pradesh would have jurisdiction in the matter.

4.1 For this purpose, my attention has been drawn by Mr. Upadhyay to clause 1.4¹ of the Particular Conditions of Contract (in short 'PCC').

5 Mr. Shankh Sengupta, who, appears for the petitioner, says that as per clause 20.6 (b)² of the PCC, the "venue" of arbitration could be Shimla or Delhi or where the project site is located.

5.1 Furthermore, Mr. Sengupta says that not only the petitioner but also respondent No.1 has appointed his nominee Arbitrator and that this petition had to be filed when, despite two notices, the Presiding Arbitrator was not appointed by respondent No.2/UOI.

6 I would have thought a more practical approach would have been adopted by respondent No.1 in view of the fact it has already appointed a nominee Arbitrator in the matter. Mr. Upadhyay,

¹1.4- Indian Law (Appropriate Courts in the State of Himachal Pradesh only shall have exclusive jurisdiction over the matters arising out of this contract) xxx

² 20.6- (b) The venue of arbitration shall be either Shimla or Delhi or Project Site only.

however, insists that this Court cannot appoint a Presiding Arbitrator in the matter because of lack of territorial jurisdiction, notwithstanding the wastage of time and money that would be involved in case the objection taken by him is sustained.

7 I have examined Clause 1.4. The said clause in no uncertain terms provides that appropriate Courts in Himachal Pradesh will have exclusive jurisdiction in respect of matters arising out of the subject contract. On the other hand, Clause 20.6 (b) which contains the arbitration agreement only speaks of venue and not seat of arbitration. As per Clause 20.6 (b), the venue could be Delhi or Shimla or where the project site is located. Clearly, in these circumstances, the instant petition would not lie in this court.

8 Faced with this situation, learned counsel for the petitioner seeks to withdraw the petition with liberty to approach the appropriate High Court.

9 It is ordered accordingly. However, in view of the fact that the respondents have wasted huge amount of time in raising the aforementioned objection and that too, casually across the bar, I am inclined to impose costs of Rs.10,000/- each on respondent No. 1 & 2.

10 The cost, as directed, will be paid to the petitioner within 10 days from today.

11 Petition is disposed of in aforesaid terms.

RAJIV SHAKDHER, J

JANUARY 07, 2019

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