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

Date of decision: 09.08.2023

+ CM(M) 1276/2023 & CM APPLs. 40654-55/2023

RADHEY ENTERPRISES

..... Petitioner

Through: Mr. Sunil Kumar Sharma, Advocate

versus

DELHI METRO RAIL CORPORATION LTD

..... Respondent

Through: None

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CORAM:

HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA

J U D G M E N T

MANMEET PRITAM SINGH ARORA, J (ORAL):

1. This petition filed under Article 227 of the Constitution of India impugns the order dated 12.05.2023 passed by the learned Sole Arbitrator in arbitration proceedings titled as **M/s Radhey Enterprises v. Delhi Metro Rail Corporation Ltd.**, dismissing the application filed by the Petitioner.

1.1. The Petitioner had filed an application on 18.08.2022 for declaring the contract dated 21.10.2013 executed between the parties to be void-ab-initio for not being in conformity with Article 299 of the Constitution of India; and further seeking stay of the Arbitral proceedings in Arbitration Petition No.415/2014.

2. The learned sole Arbitrator *vide* impugned order dated 12.05.2023 has dismissed the said application with costs of Rs. 10,000/-.

2.1. The learned sole Arbitrator while dismissing the said application has given the following key findings, relevant for this petition:



a. Issue 1: Whether the Respondent company is a 'state' within the meaning of Article 12 of the Constitution of India?

Finding: The certificate of incorporation of the Respondent Company evidences that it was registered under the Companies Act, 1956. It was a joint venture of the Government of NCT of Delhi and the Central Government with equal equity participation from both the governments. Various provisions of the Metro Railways (Operation and Management) Act, 2002 ('the Act of 2002'), coupled with the fact that Central Government had released total funds of around Rs. 35,089.70 crores to Delhi Metro, evidences the complete control of the Central Government in financial and administrative matters. Therefore, the Delhi Metro Corporation was an instrumentality or agency of the state and was an 'Authority' and was a 'State' within the meaning of Article 12 of the Constitution of India.

b. Issue 2: Whether the Contract entered into between the parties was in exercise of the executive power of the Government and that the Contract was void-ab-initio being not in conformity with the provisions of Article 299 of the Constitution of India.?

Finding: Section 6 (2) (d) of the Act of 2002 empowers the Respondent Company to execute any lease or grant any license in respect of the property held by it and under the sub-clause (e) can enter into, assign and rescind any contract or obligation. Article 148 (8) of the Article of Association of the Respondent Company specifies that the board of the company can institute, conduct, defend, compound or abandon any legal proceedings. Further as per Clause III (B) para (2) of the amended Memorandum and Article of Association, the Respondent Company is empowered to enter into any contract or arrangement for more efficient conduct of any of business of the



company. These provisions make it amply clear that the Respondent Company had made the contract with the Petitioner in exercise of the statutory power and not in exercise of executive power of Union or the State, therefore rigour of Article 299 of the Constitution of India would not apply.

c. Issue No. 3: Estoppel; The application for appointment of arbitrator was moved before the High Court at the behest of the Petitioner and the Sole Arbitrator was appointed; at the relevant time no plea was taken by the claimant that the contract dated 21.10.2013 was void-ab-initio being violative of Article 299 of the Constitution of India.

The Petitioner has filed statement of claims and the respondent had filed the statement of defence along with the counter claim and both the parties had concluded the evidence and the case is at the final stages; no plea was taken by the Petitioner at any point during this period with respect to contract not being in conformity with Article 299 of the Constitution of India.

The Petitioner had taken benefits under the contract for 9 years and now cannot take a plea that the same is not binding. Doctrine of estoppel bars the Petitioner to take such plea.

d. Issue No. 4: Limitation; The prayer made by the Petitioner is highly time-barred in light of the provisions contained in Article 58 of the Limitation Act, 1963 ('the Act of 1963'). The relief of declaration that the contract is void-ab-initio should have been raised within the period of limitation. Limitation for declaration of contract void would not be 12 years and would be 3 years under Article 58 of the Act of 1963.

3. The learned counsel for the Petitioner states that the Petitioner has not placed any reliance upon the contract dated 21.10.2013 in the claim petition and therefore the Petitioner is not precluded from challenging the said



contract.

3.1. He states that the said agreement has been produced by the Respondent in support of its counter claims.

3.2. He states that the Petitioner herein has elected to file the present petition and not avail the remedy under Section 34 of the Act of 1996, as in his opinion the issues raised in the present petition cannot be determined by the Court under Section 34 of the Act of 1996 and can only be decided by this Court under Article 227 of the Constitution of India.

4. This Court has heard the learned counsel for the Petitioner and perused the paper-book.

5. The facts of this case are as under:

i. The Petitioner entered into a contract with the Respondent company on 21.10.2023, after it was declared successful bidder for the tender of parking sites and was given license to operate the parking sites of Delhi Metro Rail Corporation ('DMRC') at Jhilmil, Mansarovar Park and Shahdara Metro Station for a period of 3 years.

ii. On 07.12.2014 the Petitioner herein wrote the letter to the Respondent for reduction of license fee by Rs. 7 Lakhs per month on the ground that due to operation of parking sites by East Delhi Municipal Corporation ('EDMC') adjacent to Shahdara and Jhilmil Metro Stations, Petitioner was forced to charge the users parking charges at par with the EDMC rates which were on the lower side.

iii. Since the said request was not accepted by the Respondent and the Petitioner had not paid the license fee, the Respondent terminated the contract of the Petitioner on 28.07.2014 in respect of all the three parking sites and the Petitioner had handed over the parking sites to the respondent company on



31.07.2014.

Due to difference between the parties, the Petitioner filed an application under Section 11(5) read with 11(6) of the Arbitration and Conciliation Act, 1996 ('the Act of 1996') before the High Court for seeking appointment of an Arbitrator, being Arbitration Petition No.415/2014. The said application was allowed by this Court *vide* order dated 04.02.2015 and the learned Sole Arbitrator was appointed to adjudicate upon the dispute between the parties.

iv. In the said arbitration petition, the Petitioner relied upon the terms and conditions of the tender for grant of license in his favour by the Respondent herein. The said terms and conditions are duly incorporated in the contract dated 21.10.2013.

v. The Petitioner filed his statement of claim. The Respondent filed its statement of defence and counter claim. The Respondent filed and relied upon a document i.e., contract dated 21.10.2013 in support of its counterclaim. There was no challenge to the jurisdiction of the learned Sole Arbitrator in the pleadings filed by the parties.

vi. The matter was at final stages when the application under consideration was filed by the Petitioner herein on 18.08.2022 challenging the said contract and the continuation of the arbitral proceedings.

6. The Application dated 18.08.2022 filed by the Petitioner, which has been dismissed by the impugned order does not mention the relevant provision of the Act of 1996 which is sought to be invoked by the Petitioner for filing the said application before the learned Sole Arbitrator. However, in view of the fact that the Petitioner is in essence challenging the validity of the contract and consequently the arbitration clause therein, it may be presumed that the said application has been filed under Section 16 of the Act of 1996.



7. Pertinently, the Petitioner herein does not dispute the due execution of the agreement dated 12.06.2013 or that the terms and conditions of the tender, which were basis of the arbitration petition filed by the Petitioner before the High Court forms part of the said contract.

8. As noted above the Petitioner itself approached the High Court for appointment of an arbitrator and thereafter filed the statement of claim without raising any objection to the validity of the contract or the arbitration clause. In the opinion of this Court in view of the same, firstly, this application itself cannot be maintained at the behest of the Claimant i.e., the Petitioner since it is the Claimant who invoked the arbitration clause without any demur and raised its claims. The Claimant thus unequivocally consented to the arbitration proceedings.

9. Secondly, assuming such an application could have been maintained, however, in view of the fact that the statement of claim was filed by the Petitioner as early as in 2015, the time limit for filing an application under Section 16 of the Act of 1996 stood exhausted as on 18.08.2022 i.e., the date of on which the application was filed.

10. Lastly, the Petitioner by filing the application invited the decision of the learned Sole Arbitrator on the said application. The learned Sole Arbitrator has acted within its jurisdiction under Section 16 of the Act of 1996 while deciding the pleas raised in the said application by the impugned order. Further the correctness of that decision is not open to scrutiny under Article 227 of the Constitution of India.

11. This Court is of the opinion that no ground has been made out by the Petitioner for invoking the jurisdiction of Article 227 of the Constitution of India. In view of the fact that the Respondent herein has the statutory remedy



of Section 34 of the Arbitration and Conciliation Act, 1996 available to it against the said decision of the learned Sole Arbitrator and therefore, the Petitioner must await the final award to challenge the issue raised in this petition against the said decision in accordance with law.

12. The Petitioner by filing the present petition is seeking to interdict the arbitral process which cannot be permitted. The matter has been pending in arbitration since 2015 and this application was filed in the year 2022 at the stage of final arguments.

13. In view of the findings of this Court above the present petition is dismissed.

14. Pending applications stands disposed of.

MANMEET PRITAM SINGH ARORA, J

AUGUST 9, 2023/hp/sk

[Click here to check corrigendum, if any](#)

