



\$~2 (2022)

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

% *Date of Decision: 16th March, 2022*

+ **ARB.P. 1120/2021**

ECOGREEN ENERGY GWALIOR
PVT. LTD.

..... Petitioner

Through: Mr Kapil Sankhla, Mrs Meghna
Sankhla, Mr Wishwa Pratap
and Mr Devesh Matta,
Advocates.

versus

COMMISSIONER OF MUNICIPAL
CORPORATION, GWALIOR

..... Respondent

Through: Mr Harish Dixit and Mr Sarthak
Chiller, Advocates.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

VIBHU BAKHRU, J. (ORAL)

1. The petitioner has filed the present petition under Section 11 of the Arbitration and Conciliation Act, 1996 (hereafter 'A&C Act'), *inter alia*, praying that the nominee arbitrator be appointed on behalf of the respondent to adjudicate the disputes between the parties.

2. The parties had entered into a Concession Agreement dated 19.05.2017 for "*Implementation of Regional Integrated Solid Waste Management Project for 16 Urban Local Bodies*".



3. Certain disputes have arisen between the parties in connection with the said Concession Agreement. The petitioner had issued a preliminary termination notice dated 05.10.2020 to the respondent in terms of Article 9.2(b)(ii) of the Concession Agreement alleging violation of certain terms of the said Agreement. It is contended that in terms of the Concession Agreement, the respondent was obliged to send a proposal for curing the defect/defaults. However, instead of doing so, the respondent had issued a notice dated 10.11.2020 under Article 9 terminating the said Concession Agreement.

4. It is stated that the respondent had also encashed the bank guarantees furnished in the sum of ₹12,73,00,000/- of the petitioner.

5. In view of the aforesaid disputes, the petitioner invoked the Dispute Resolution Clause (Article 11 of the Concession Agreement) and sought amicable resolution of the disputes. Since the parties could not resolve their disputes, the petitioner issued a notice dated 13.09.2021 under Section 21 of the A&C Act invoking the Arbitration Agreement in terms of Article 11.2(a) of the Concession Agreement and also nominated a former Judge of this Court as an Arbitrator. It is stated that the respondent has failed and neglected to respond to the said notice. Consequently, the petitioner has filed the present petition.

6. The respondent has contested the maintainability of the present petition. According to the respondent, the arbitration is required to be conducted under the Madhya Pradesh Madhyastham Adhikaran Adhiniyam, 1983 and not in accordance with the A&C Act. The



respondent also contends that this Court does not have the territorial jurisdiction to entertain the present petition as the place of arbitration is Gwalior.

7. The learned counsel appearing for the petitioner has countered the contentions advanced on behalf of the respondent. He submits that it is apparent that the parties had consciously elected that the disputes be resolved under the A&C Act and not under the Madhya Pradesh Madhyastham Adhikaran Adhiniyam, 1983. He also relied on the decision of the Division Bench of the Madhya Pradesh High Court in *M.P. Road Development Corporation v. Ministry of Road, Transport and Highways (MORT & H) and Anr.: 2021 SCC OnLine MP 1599* in support of his contention that once the parties have consciously agreed to refer the disputes to arbitration under the Arbitration and Conciliation Act, 1996, the provisions of Madhya Pradesh Madhyastham Adhikaran Adhiniyam, 1983 are inapplicable.

8. Insofar as the place of arbitration is concerned, he submits that the parties had agreed that the arbitration shall be conducted under the Rules of the International Centre for Alternative Dispute Resolution, New Delhi (ICADR Rules). He submits that the Rules expressly provided that the place of arbitration would be New Delhi or such other places where the regional offices of the International Centre for Alternative Dispute Resolution (ACADR) are located. He referred to Rule 17 of the ICADR Rules, which reads as under:

“17. Place of arbitration.— (1) The place of arbitration shall be New Delhi or such other place



where any of the Regional Offices of ICADR is situated as the parties may agree :

Provided that failing any agreement between the parties, the place of arbitration shall be determined by the arbitral tribunal having regard to the circumstances of the case, including convenience of the parties.

(2) The arbitral tribunal may, after consulting the ICADR, meet at any place it considers appropriate for consultation among its members, for hearing witnesses, experts or the parties, or for inspection of documents, goods or other property.”

9. At this stage it is relevant to refer to the Arbitration Clause. Article 11.2 of the Concession Agreement reads as under:

“11.2 Arbitration

a. **Procedure**

Subject to the provisions of Clause 11.1, any Dispute which is not resolved amicably shall be finally settled by binding arbitration under the “Rules of arbitration of International center for alternative dispute resolution, New Delhi (The Rules)”. The arbitration shall be by a panel of three arbitrators, chaired by commissioner, Urban Administration and Development Madhya Pradesh, and one to be appointed by each Party. The Party requiring arbitration shall appoint an arbitrator in writing, inform the other Party about such appointment and call upon the other party to appoint its arbitrator. If within 30 days of receipt of such intimation, the other Party fails to appoint its arbitrator, the Party seeking appointment of arbitrator may take further steps in accordance with Arbitration Act.

**b. Place of Arbitration**

The request for arbitration shall ordinarily be Gwalior but by agreement of the Parties, the arbitration hearings, if required, may be held elsewhere.

c. Language

The request for arbitration, the answer to the request, the terms of reference, any written submissions, any orders and awards shall be either in English or Hindi and, if oral hearings take place, English or Hindi shall be the language to be used in the hearings.

d. Enforcement of Award

The Parties agree that the decision or award resulting from arbitration shall be final and binding upon the Parties and shall be enforceable in accordance with the provisions of the Arbitration rules subject to the rights of the aggrieved Parties to secure relief from any higher forum.”

10. In addition to the above, it is also relevant to refer to Article 16.4 of the said Concession Agreement which reads as under:

“16.4 Governing Law and Jurisdiction

a. This agreement shall be governed by the laws of India. The Courts at Gwalior shall have jurisdiction over all matter arising out of or relating to this Agreement.”

11. A plain reading of the Arbitration Clause (Article 11.2)



indicates that the parties had agreed that the place of arbitration shall be Gwalior. However, the parties had also stipulated that the hearings could be held at another place if the parties so agreed. Concededly, there is no agreement other than the Concession Agreement [other than Article 11.2 (b)] regarding the place of Arbitration. Therefore, there is no ambiguity that the place of arbitration is Gwalior.

12. Rule 17 of the ICADR Rules indicates that the place of arbitration would be New Delhi or such other place where the regional office of ICADR is situated as the parties may agree. However, the proviso further makes it clear that failing any such agreement, the place of arbitration shall be determined by the Arbitral Tribunal. Clearly, there is no agreement that the place of arbitration shall be New Delhi or any other place where the regional office of ICADR is located. Therefore, it would be for the Arbitral Tribunal to determine the place of arbitration. As noticed above, Article 11.2(b) of the Concession Agreement clearly indicates that the place of arbitration is required to be in Gwalior.

13. Article 16.2 of the Concession Agreement also expressly indicates that the Courts at Gwalior will have the exclusive jurisdiction with regard to the subject matter of the Agreement. Article 11.2 and Article 16.2 of the Agreement, indicate the place of arbitration and the courts that would exercise jurisdiction in the matter.

14. In *S.P. Singla Constructions Private Limited v. Construction*



and Design Services, Uttar Pradesh Jal Nigam: Arb.P. 450/2021, decided on 23.09.2021 the Coordinate Bench of this Court has also considered the similar issue. In that case, the parties had agreed that the arbitration shall be conducted under the Rules of ICADR. However, the venue of arbitration was agreed to be at Lucknow. In the said context, the Court had held that since the Agreement indicated that the place of arbitration would be other than New Delhi and notwithstanding Rule 17 of the ICADR Rules, the High Court exercising territorial jurisdiction in respect of place of arbitration would be the appropriate court for entertaining the petition under Section 11 of the A&C Act. Accordingly, the Court had dismissed the petition with liberty to the petitioner to approach the Courts at Lucknow.

15. Although the learned counsel has sought to distinguish the said decision, however, this Court does not find any material ground on which the said decision can be distinguished and the same is binding on this Court.

16. Insofar as the question whether the arbitration is required to be conducted under the A&C Act or the Madhya Pradesh Madhyastham Adhikaran Adhiniyam, 1983, the decision in the case of *M.P. Road Development Corporation* (*supra*) appears to cover this issue in favour of the petitioner. However, in view of the conclusion that this Court does not have the jurisdiction to entertain the present petition under Section 11 of the A&C Act, it is not necessary for this Court to examine the said question in these proceedings.



17. In view of the above, the petition is dismissed with liberty to the petitioner to approach the appropriate court.

VIBHU BAKHRU, J

MARCH 16, 2022

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

