

Item No. 14
15.06.2023
Court. No. 19
GB

C.O. 1557 of 2023

JKS Infrastructure Pvt. Ltd.
Vs.
Zamil Steel Buildings India Pvt. Ltd.

Mr. Soumava Mukherjee

...for the Petitioner.

The Court does not find any error in the order passed by the learned sole arbitrator in A.P. No.239 of 2022. The prayer of the petitioner for composite reference of two arbitration matters being A.P. No.238 of 2022 and A.P. No.239 of 2022 or in the alternative allowing the petitioner to file a composite counter-claim so far as the two proceedings were concerned, had been turned down by the learned arbitrator on April 20, 2023. The order passed by the learned arbitrator is as follows:-

“Having gone through the Statement of Claim, the application for passing appropriate orders and the written objection, I am very much convinced that these two arbitral matters have arisen out of two distinct agreements between the parties and upon consideration of the prayer of the claimant in respect of the arbitral proceedings, I am of the view that if a composite reference is allowed, it will not be fit, proper and convenient in the matter of disposal of the arbitral matters. Every application under Section 11 of the 1996 Act is to be disposed of on the basis of its own merits and since two separate agreements are involved in the matter of disposal of the two arbitral proceedings, actually there will be no convenience for composite reference or giving direction for filing a composite counter claim. Moreover, the Act of 1996 does not provide any provision for allowing such prayer. The said Act is exhaustive in the matter of deciding the disputes of arbitration and the said

applications are to be disposed of within the scope of the Act of 1996.

As regards the decision in AIR 2020 Del 132 as referred to by Mr. Mukherjee, I am of the view that the decision is with regard to a challenge of one award out of the three awards between the same parties under Section 34 of the Act of 1996. Therefore the said judgment has in no manner any application in respect of the present situation between the parties.

I have observed above that the application shall be disposed of on the merits of the applications after due consideration of the contentions raised by the respondent. Be it mentioned here that the Statement of Defence has not been accepted as yet, though it has already been filed as per directions of the Tribunal. So, at present, I have no scope to look into the said Statement of Defence. For the time being, it shall be considered at the appropriate stage and appropriate orders may be passed accordingly. For the time being, I am of the view that there is no scope of allowing the application filed by the respondent. So, the said application stands rejected.

The Statement of Defence filed by the respondent is accepted and now the arbitral proceeding shall proceed in accordance with law.”

This Court has perused the order impugned and finds that the learned arbitrator was of the opinion that as the Statement of Defence had not been filed, there was no scope to look into the Statement of Defence to enable the learned arbitrator to come to a conclusion as to whether the contentions of the petitioners would justify a composite reference or filing of a composite counter-claim. The said prayer of the petitioner was turned down on the said ground and it was further directed that the prayers would be considered at an appropriate stage and appropriate orders may be passed accordingly.

Thus, this Court is of the view that learned arbitrator turned down the applications as the same appeared to be premature and were liable to be considered only when the Statement of Defence was available. The petitioner has not been totally non-suited from raising such point as it appears from the order of the learned arbitrator which the learned arbitrator held, would be taken into account at the appropriate stage.

The petitioner is always at liberty to take appropriate steps before the learned arbitrator.

Accordingly, the revisional application is disposed of.

However, there will be no order as to costs.

Urgent photostat certified copy of this order, if applied for, be given to the parties on priority basis.

(Shampa Sarkar, J.)