



Arb.Original Petition (Com.Div.) 581 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.02.2023

CORAM:

THE HONOURABLE MR.JUSTICE KRISHNAN RAMASAMY

Arb.Original Petition (Com.Div.) No.581 of 2022

Gounder Infratech Company,
Rep. by its Managing Partner,
Mr.P.Chandravel,
No.B-004, Mantri Elite Apartment,
J.P.Nagar 4th Phase,
Bannerughatta Road,
Bangalore - 560 076, Karnataka.

... Petitioner

Vs.

The Chief Engineer,
Construction of Southern Railway Administration,
Southern Railway, Construction Organization
Periyar EVR High Road, Egmore, Chennai.

... Respondent

PRAYER: The Original Petition has been filed under Section 11 (6) of Arbitration and Conciliation Act, 1996, to appoint a sole, technically competent, independent and impartial Arbitrator to adjudicate upon the disputes between the parties.



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For Petitioner : Mr.P.J.Rishikesh
for M/s.T.Thangadurai

For Respondent : Mr.Prasad Vijayakumar

ORDER

The present Original Petition has been filed under Section 11 (6) of Arbitration and Conciliation Act, 1996, for an appointment of sole Arbitrator to adjudicate upon the disputes between the parties.

2. According to the petitioner, the respondent is liable to pay the following dues to the petitioner:-

S. No.	Description of claims	Amount Rs.
1.	To release only new Bank Guarantee submitted in lieu of old bank guarantee	1,25,00,000/-
2.	Price variation claim	2,75,000/-
3.	GST Neutralization payment	5,25,000/-
4.	Damages as interest from the date of completion to the date of award @ 15% per annum	To be quantified
5.	Interest from the date of award and up to the date of realization (post-award)	To be quantified
6.	Cost of arbitration and legal expenses	As per Actual
	Total	1,33,00,000/- + to be quantified



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But, the respondent has not paid the said amount and therefore, in terms of Clause 64 of the General Condition of Contract, the present dispute can be referred to the Arbitrator. Clause 64 of the General Condition of Contract is extracted as follows:-

"64.(1) Demand For Arbitration :

64.(1) (i) *In the event of any dispute or difference between the parties hereto as to the construction or operation of this contract, or the respective rights and liabilities of the parties on any matter in question, dispute or difference on any account or as to the withholding by the Railway of any certificate to which the contractor may claim to be entitled to, or if the Railway fails to make a decision within 120 days, then and in any such case, but except in any of the "excepted matters" referred to in Clause 63 of these Conditions, the contractor, after 120 days but within 180 days of his presenting his final claim on disputed matters shall demand in writing that the dispute or difference be referred to arbitration.*

64.(1) (ii) *The demand for arbitration shall specify the matters which are in question, or subject of the dispute or difference as also the amount of claim item-wise. Only such dispute(s) or difference(s) in respect of which the demand has been made, together with counter claims or set off, given by the Railway, shall be referred to arbitration and other matters shall not be included in the reference.*

64.(1) (iii) (a) *The Arbitration proceedings shall be assumed to have commenced from the day, a written and valid demand for arbitration is received by the Railway.*



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(b) The claimant shall submit his claim stating the facts supporting the claims alongwith all the relevant documents and the relief or remedy sought against each claim within a period of 30 days from the date of appointment of the Arbitral Tribunal.

(c) The Railway shall submit its defence statement and counter claim(s), if any, within a period of 60 days of receipt of copy of claims from Tribunal thereafter, unless otherwise extension has been granted by Tribunal.

(d) Place of Arbitration : The place of arbitration would be within the geographical limits of the Division of the Railway where the cause of action arose or the Headquarters of the concerned Railway or any other place with the written consent of both the parties.

64.(1) (iv) *No new claim shall be added during proceedings by either party. However, a party may amend or supplement the original claim or defence thereof during the course of arbitration proceedings subject to acceptance by Tribunal having due regard to the delay in making it.*

64.(1) (v) *If the contractor(s) does/do not prefer his/their specific and final claims in writing, within a period of 90 days of receiving the intimation from the Railways that the final bill is ready for payment, he/they will be deemed to have waived his/their claim(s) and the Railway shall be discharged and released of all liabilities under the contract in respect of these claims.*

64.(2) Obligation During Pendency Of Arbitration : *Work under the contract shall, unless otherwise directed by the Engineer, continue during the arbitration proceedings, and no payment due or payable by the Railway shall be withheld on account of such proceedings, provided, however, it shall be open for Arbitral Tribunal to consider and decide whether or not such work should continue during arbitration proceedings.*



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64.(3) Appointment of Arbitrator :

64.(3) (a)(i) *In cases where the total value of all claims in question added together does not exceed Rs. 25,00,000 (Rupees twenty five lakh only), the Arbitral Tribunal shall consist of a Sole Arbitrator who shall be a Gazetted Officer of Railway not below JA Grade, nominated by the General Manager. The sole arbitrator shall be appointed within 60 days from the day when a written and valid demand for arbitration is received by GM.*

3. The learned counsel for the petitioner submits that the petitioner was awarded the work by way of letter of acceptance dated 23.06.2017 and subsequently an Agreement bearing No.33/DY.CE/GC-III/TPJ, dated 06.10.2017, was executed between the parties to carry out the work. He further submits that the total value of the contract was Rs.17,82,07,508/- and according to the petitioner, the entire work has been completed. The petitioner had submitted a bank guarantee to the value of Rs.1,25,00,000/- in lieu of security deposit and the same has not been released by the respondent. Hence, the petitioner issued notice under Section 21 on 26.04.2021 and the respondent, by its letter dated 06.05.2021, sent a reply to the petitioner, but, the dispute has not been resolved. Hence, without any option, the petitioner has filed the present petition for appointment of sole Arbitrator to adjudicate upon the disputes



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between the parties.

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4. The learned counsel for the respondent would submit that the subject work agreement is presently under Vigilance investigation and hence, all the file documents with M-Book are taken by the Vigilance for verification and the same is now in the custody of the Vigilance Office.

5. The learned counsel for the respondent would further submit that as per the judgment of the Hon'ble Supreme Court, the petitioner is not entitled for appointment of Arbitrator. Since there is a serious allegation of fraud played against public instrumentalities, it cannot be referred to the Arbitrator. However, he has no serious objection for appointment of Arbitrator.

6. Heard the learned counsel appearing on either side and perused the materials placed before this Court.

7. In the present case, the contract was awarded for a sum of Rs.17,82,07,507/- Crores and the entire work has been completed by the petitioner. In this circumstance, the petitioner requested the respondent to



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release the Bank Guarantee, which is submitted in lieu of old Bank Guarantee and other claims. Therefore, this Court is of the considered view that the issue involved in this case can be decided by the Arbitrator, but, if there is a serious issue as alleged, it is open to the respondent to raise the said aspects before the learned Arbitrator. As on today, only by referring the Vigilance Case, which is pending, no materials have been placed before this Court regarding seriousness of allegation and for rejecting the present petition for appointment of Arbitrator.

8. In view of the above, this Court is inclined to appoint a sole Arbitrator to decide the issue that is involved in this case and accordingly, ***Mr.Naveen Kumar Murthi, Advocate, S2, Singapore Plaza, New No.337 / Old No.164, Linghi Chetty Street, Chennai - 600 001. Mobile No.9884740424,*** is appointed as Arbitrator to enter upon reference and adjudicate the disputes *inter se* the parties. The learned Arbitrator appointed herein, shall after issuing notice to the parties and upon hearing them, pass an award as expeditiously as possible, preferably within a period of six (6) months from the date of receipt of the Order. The learned Sole Arbitrator appointed herein shall be paid fees and other incidental charges, fixed by him and the same shall be borne by the parties equally.



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KRISHNAN RAMASAMY, J.

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9. This Original Petition is ordered accordingly, leaving the parties to bear their own costs. It is open to the parties to raise all the issues, which have been put forth before this Court and the learned Arbitrator is directed to decide the issue between the parties on his own, without taking any observation made in this order.

22.02.2023

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To

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Southern Railway, Construction Organization
Periyar EVR High Road, Egmore, Chennai.

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