

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

% **Date of order : 21st March 2023**

+ **O.M.P. (T) (COMM.) 126/2022 & I.A. 3662/2023**

HI TECH SWEET WATER TECHNOLOGIES PVT LTD

..... Petitioner

Through: Mr. Rajesh Yadav, Sr. Advocate
with Mr. Udayan Khandewal, Mr.
Shubhankar Sharma and Mr.
Trivesh, Advocates

versus

INDIAN RAILWAY CATERING AND TOURISM

CORPORATION LTD

..... Respondent

Through: Appearance not given

CORAM:

HON'BLE MR. JUSTICE CHANDRA DHARI SINGH

ORDER

CHANDRA DHARI SINGH, J (Oral)

1. The instant petition under Section 14(2), 15(2) and 15(3) of the Arbitration and Conciliation Act, 1996 (hereinafter "Arbitration Act") has been filed on behalf of petitioner seeking the following reliefs:-

"(i) pass an order terminating the mandate of the Arbitral Tribunal comprising Hon'ble Mr Justice (retd.) S.L. Bhayana, learned sole Arbitrator;
(ii) appoint a substituted Arbitrator;
(iii) pass any other or further order which this Hon'ble Court may deem fit and proper in the fact and circumstances of the case."

2. The background of the matter reveals that the petitioner is a

company duly constituted under the Companies Act, 1956 engaged in the business of manufacture, supply and export of RO Membranes, RO Water Purifiers, Spare Parts thereto, etc., and the respondent is the Indian Railway Catering and Tourism Corporation Ltd., also a company registered under the Companies Act, 1956.

3. The respondent invited Expression of Interest for empanelment of firms for installation and operation of water vending machines on stand-alone basis at certain railway stations. For the same, the petitioner was declared the successful bidder and was empanelled upon satisfying the conditions specified in the Expression of Interest.

4. The work in accordance with the Expression of Interest commenced, however, certain disputes arose between the parties during the course of the work. Consequently, arbitration proceedings were invoked and vide letter dated 13th March 2020, Sh. Vinod Asthana, Former MD, Central Railside Warehouse Company, was appointed as the sole arbitrator to adjudicate the disputes between the parties. The petitioner objected to the appointment of the said arbitrator and moved this Court by way of filing O.M.P. (T) (COMM) 100/2021, seeking termination of mandate of the arbitrator and appointment of a substitute arbitrator. Accordingly, a Coordinate Bench of this Court, vide its order dated 6th October 2021, appointed Justice (Retd.) S.L. Bhayana as the substitute sole arbitrator.

5. At this stage, the petitioner has approached this Court by way of the instant petition seeking termination of the learned sole arbitrator appointed by this Court to adjudicate the disputes between the parties and

appointment of a substitute arbitrator.

6. Mr. Rajesh Yadav, learned senior counsel appearing on behalf of the petitioner submitted that *vide* order dated 6th October 2021, the Coordinate Bench of this Court appointed the learned sole arbitrator to adjudicate the disputes between the parties and directed that the fee of the learned sole arbitrator would be fixed as per the Fourth Schedule of the Arbitration Act.

7. It is submitted that during the course of the arbitration proceedings, the petitioner was directed to file its Statement of Defence, however, despite request, insufficient time was granted to the petitioner to file the same. Since, the time was insufficient, the petitioner could not file the Statement of Defence within the time stipulated by the learned arbitrator, and consequently the learned arbitrator imposed a cost of Rs. 10,000/- upon the petitioner, to be paid to the arbitrator himself.

8. It is submitted that the petitioner paid the cost and secretarial charges on the subsequent date of proceedings. It is further submitted that the petitioner deposited an amount of Rs. 30,000/- towards cost and secretarial charges with the learned arbitrator. However, the fact of submission of the fees was not recorded in any of the orders passed by the learned arbitrator. The amount of secretarial charges kept increasing with every date despite the fact that no secretarial work was actually carried out. Even the orders were being handwritten and no typed copies of orders were ever received by the parties.

9. The learned senior counsel further submitted that on 6th January 2022, the learned arbitrator gave directions to the parties to deposit a

further amount of Rs. 55,000/- towards secretarial charges and Rs. 2,10,000/- each towards partial arbitral fees. Further, on 24th February 2022, the respondent herein deposited an amount of Rs. 2,20,500/- towards arbitral fees, however, the learned arbitrator directed the respondent to deposit an additional amount of Rs. 79,500/- towards fees and Rs.50,000/- towards secretarial charges. The petitioner was also directed to deposit Rs. 35,000/- towards secretarial charges and Rs. 3,00,000/- towards the fees.

10. It is submitted that on several occasions the parties had pointed out to the learned arbitrator that the fees was to be fixed in accordance with the Fourth Schedule of the Arbitration Act, hence, the total amount of the fees was about Rs. 6,46,875/-. It is submitted that on 15th March 2022, the matter was fixed for proceedings, however, the learned arbitrator through WhatsApp communication conveyed that he shall not be joining the proceedings till the arbitral fees is paid.

11. It is submitted that thereafter several proceedings took place without any substantial progress. It is also submitted that the arbitrator's fees, as per order dated 14th October 2022 stood at Rs. 64,33,234/-. This amount further increased to Rs. 64,93,234/- on 27th October 2022 and further to Rs. 65,53,234/- on 11th November 2022. It is submitted that there is no rhyme or reason for the fees to be this high, especially in view of the fact that the appointment order of the arbitrator clearly stipulates that the fees shall be as per the Fourth Schedule of the Arbitration Act and the claim is merely Rs. 3.8 crores.

12. The learned senior counsel submitted that learned arbitrator,

despite receipt of the strong objections from the petitioner, is continuing to charge an unreasonably high amount towards the arbitral fees and secretarial charges. It is submitted that the learned Arbitrator is, clearly, *de jure* or *de facto* unable to perform his functions and hence, it is prayed that the mandate of the learned arbitrator be terminated and a substitute arbitrator be appointed.

13. The learned counsel appearing on behalf of the respondent opposed the instant petition filed on behalf of the petitioner by way of filing its reply to the petition on *inter alia* the grounds that the petitioner is attempting to take advantage of its own wrongdoing by prolonging the matter and that the petitioner has not paid any amount towards the fees of the learned arbitrator.

14. However, during the course of the arguments, the learned counsel for the respondent fairly conceded that the respondent has no objection if the mandate of the arbitrator so appointed by this Court on 6th October 2021 is terminated and a substitute arbitrator is appointed to adjudicate the disputes between the parties.

15. Heard the learned counsel for the parties and perused the record.

16. The petitioner has raised several objections to the proceedings that have been initiated and have been continuing before the learned arbitrator. The primary objection raised on behalf of the petitioner is *qua* the fees being charged by the learned arbitrator, which is purportedly above and beyond the mandate of the Fourth Schedule of the Arbitration Act.

17. This Court, being satisfied of the sufficient grounds shown on

behalf of the petitioner as well as considering the no-objection of the respondent, is inclined to terminate the mandate of the learned sole arbitrator. Accordingly, the prayer to this effect sought by the petitioner is granted and the mandate of the sole arbitrator appointed by the Coordinate Bench of this Court *vide* order dated 6th October 2021 in O.M.P. (T) (COMM.) 100/2021 is terminated.

18. It is also observed that the arbitration proceedings have already been initiated almost over 1 ½ years ago and the parties are in consensus that any delay or further prolonging in the proceedings would lead to grave prejudice to the parties. Therefore, to avoid any prejudice to the rights of the parties and keeping in view the spirit of resolution under arbitration proceedings, this Court is inclined to grant the prayer sought on behalf of the petitioner and which is not objected to on behalf of the respondent.

19. Accordingly, the disputes having arisen between the parties pending with the sole arbitrator are being referred forthwith to the substituted arbitrator due to termination of the mandate of the sole arbitrator, in the terms as mentioned hereunder:

ORDER

- (i) Mr. Vinay Garg, Senior Advocate is appointed as the sole arbitrator to adjudicate the disputes which have arisen between the parties and were pending with the sole arbitrator Justice (Retd.) S.L. Bhayana, appointed by the Coordinate Bench of this Court *vide* order dated 6th October 2021 in O.M.P. (T) (COMM.) 100/2021;

- (ii) The proceedings before the Arbitral Tribunal shall resume from the stage where they were left at;
- (iii) The learned sole arbitrator, before entering the arbitration reference, shall ensure the compliance of Section 12(1) of the Arbitration and Conciliation Act, 1996;
- (iv) The learned sole arbitrator shall be paid fees as prescribed under the Delhi International Arbitration Centre (DIAC) (Administrative Cost and Arbitrators Fees) Rules, 2018 as amended vide notification dated 15th November, 2022;
- (v) At the first instance, the parties shall appear before the learned sole arbitrator within 10 days from today on a date which may be mutually fixed by the learned sole arbitrator;
- (vi) All contentions of the parties are expressly kept open.

20. A copy of the order be forwarded to the learned sole arbitrator on the following address:

Mr. Vinay Garg, Senior Advocate
Address- A-166, Lower Ground Floor,
Defence Colony, New Delhi
Contact No.- 9810138124

21. The petition is disposed of in the aforesaid terms along with pending applications, if any.

22. The order be uploaded on the website forthwith.

CHANDRA DHARI SINGH, J

MARCH 21, 2023

gs/ms

Click here to check corrigendum, if any