

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

% **Date of order : 20th February, 2023**

+ **ARB.P. 1437/2022**

M/S MANRAJ ENTERPRISES Petitioner

Through: Appearance not given

versus

UNION OF INDIA Respondent

Through: Mr. Balendu Shekhar, CGSC with
Mr. Krishna Chaitanya, Mr.
Sriansh Prakash and Mr. R. K.
Maurya, Advocates

CORAM:

HON'BLE MR. JUSTICE CHANDRA DHARI SINGH

ORDER

CHANDRA DHARI SINGH, J (Oral)

1. The present petition has been filed by the petitioner under section 11 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as “**the Act, 1996**”) for redressal of disputes arising between the parties, under the General Conditions of Contract (GCC), 2014.
2. Learned counsel for the petitioner submitted that the petitioner is a registered partnership firm which provides its numerous services often connected to electricity on a contractual basis to various organisations, including Ministries and Departments of the Government of India.
3. It has been submitted on behalf of the petitioner that the respondent invited tender for the execution of work named and styled as "Provision

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of Circuit Breakers and Modification of protection system in New Delhi area to improve reliability of traction power supply”.

4. It has been further submitted that the petitioner responded to the request for proposals by submitting a bid for the project on 10th September, 2018, and the respondent accepted the same via detailed letter of acceptance bearing number 230-Elect/TRD/14110/Works/2015-16/01 dated 14th March, 2018, on behalf of the President of India.

5. It has been submitted on behalf of the petitioner that the EMD for an amount of Rs. 1,61,580.00/- was submitted along with tender in the form of online payment-NB (IREPS Ref.ID/Bank Trans. ID No. PE399027/17253496669 dated 10th September, 2017 which was retained as ISD. Furthermore, as desired by the respondent the petitioner vide letter dated 18th April, 2018 also submitted the Performance Bank Guarantee bearing No. 0505118BG00000855 dated 11th April, 2018 for an amount of Rs. 4,33,550.00/- (Rupees Four Lakhs Thirty Three Thousand Five Hundred and Fifty only) issued by State Bank of India, G-3, Surya Plaza, K-185/2, New Friends Colony, New Delhi-110025.

6. It has been submitted on behalf of the petitioner that the petitioner had initiated all necessary arrangements for the proper execution and completion of the awarded work within the designated term of completion as soon as the job was awarded. However, as the petitioner noted vide letters dated 5th April, 2018, 11th April, 2018, and 18th April, 2018, there were delays by the respondent in providing the drawing of the site to enable the petitioner to prepare the drawings of the items to be executed for approval.

7. It is further submitted that despite requests and reminders, the

respondent failed to deliver designs and a usable site, as a result, the petitioner was reminded to take proper action vide letter dated 18th May, 2018. The petitioner's letters dated 1st June, 2018 and 19th June, 2018 prepared and presented the materials for the execution of the works for inspection and approval.

8. It is submitted on behalf of the petitioner that vide letters dated 18th June, 2018 and 25th June, 2018 the petitioner alerted Northern Railway's chief electrical engineer with respect to the respondent's delays and defaults and requested to resolve the situation promptly as the department has failed to any action. However, despite requests, the agency did not make an effort to give site locations and drawings or appoint a representative to inspect things. Hence, vide letter dated 27th August, 2018, the petitioner once more requested the respondent to provide the essential details. It is further submitted that vide said letter, the petitioner also reserved the right to seek compensation for idle labour, demurrage claimed by the supplier owing to a delay in inspection, etc.

9. It is asserted on behalf of the petitioner that the six-months completion limit that was set forth at that time period ended on 13th September, 2018. That the respondent's delays and defaults caused the petitioner to incur losses, and that this fact was communicated to the respondent vide letter dated 1st October, 2018, in which the petitioner instructed the respondent to pay the claims or else treat the letter in question as notice under GCC, clause 64 for the appointment of an arbitral tribunal, and resultantly, invoked the arbitration clause.

10. It is further submitted that in response thereof, the respondent forwarded a list of four names from a panel of retired railway officers

vide letter dated 8th March, 2019 for nominating an independent Arbitrator.

11. It is submitted on behalf of the petitioner that out of the panel of four arbitrators submitted by the respondent, the petitioner suggested the names of two individuals vide letter dated 29th May, 2019, Sh. K.K. Gupta, Retd. CE/C/ECR, and Sh. Anup Sahu, Retd. AGM/NR. This was followed by a letter from the petitioner on 27th August, 2019. It is further submitted that the appointment letter from the department assigning Sh. K.K. Gupta as the sole arbitrator for the resolution of disagreements and claims between parties was forwarded by the appointing authority through letter dated 12th September, 2019.

12. It is submitted on behalf of the petitioner that due to the fact that not all claims have been referred, and departmental arbitrators do not consider claims unless they are referred to them by an appointing authority or a court, the appointment dated 3rd June, 2019 is insufficient, incompetent, and illegal in the sense of the law. Furthermore, it is well established law that a dispute between the parties over whether a claim is an exempted subject must be resolved by the arbitrator in accordance with Section 16 of the Act, 1996. Otherwise, it would be against Section 12(5) of the Act, 1996, to appoint a departmental person as an arbitrator.

13. Learned counsel appearing on behalf of the respondent submitted that the main contention in the instant petition is that if any Arbitrator is appointed from the panel proposed by the respondent, it will be contrary to the statutory provision i.e., Section 12(5) read with seventh schedule of the Act, 1996.

14. Learned counsel for the respondent vehemently submitted that the

position of law is no more *res integra* with respect to appointment of arbitrator from the panel since the same has been settled by the Hon'ble Supreme Court in the case of ***Central Organisation for Railway Electrification vs. ECI-SPIC-SMO-MCML (JV) a Joint Venture Company*** reported as (2020) 14 SCC 712, wherein it has been held that if any Arbitrator is appointed from the panel, it shall not be the violation of the Section 12(5) of the Act, 1996.

15. At this juncture, learned counsel appearing on behalf of the petitioner submitted that in the other cases, the respondent has agreed to appoint the independent Sole Arbitrator to adjudicate the arbitral dispute and the petitioner has referred the order dated 6th February, 2023 passed by the Coordinate Bench of this Court in the case of ***M/s. Manraj Enterprises vs. Union of India*** bearing no. **ARB. P. 1325/2022**.

16. Heard learned counsel for the parties and perused the records.

17. It is an admitted fact that there are provisions under the contract for invoking arbitration and the petitioner has duly invoked the Arbitration clause by way of issuing notice under Section 21 of the Act, 1996. The respondent has agreed that there are arbitral disputes between the parties which may be adjudicated by learned Arbitral Tribunal. The main objection raised on behalf of both the parties is with respect to the name of the independent arbitrator.

18. Without entering into the merits of the case and law, this Court is inclined to allow the instant petition.

19. As agreed on behalf of both the parties, this Court finds it pertinent to appoint a sole arbitrator to adjudicate the disputes between the parties. Hence, the following order:

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ORDER

- (i) Mr. Shyam Sharma, Advocate is appointed as a sole arbitrator to adjudicate the disputes between the parties which have arisen under the General Conditions of Contract;
- (ii) The learned sole arbitrator, before entering the arbitration reference, shall ensure the compliance of Section 12(1) of the Arbitration and Conciliation Act, 1996;
- (iii) 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;
- (iv) 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;
- (v) 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:

Shyam Sharma, Advocate
Chamber No. - 287, Lawyer's Chamber Block - II
Delhi High Court, New Delhi – 110003
Ph. No. - +91-9810153965
E-mail Id – law.shyam2@gmail.com

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

FEBRUARY 20, 2023

gs/ug

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

