

Renu Bala
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**CM-2586-CII-2024 in/and
ARB-341-2023 (O&M)****2**

11.02.2020 (Annexure P-1). He submits that some disputes arose as the petitioner was not given the vacant site within time and vide letter dated 02.04.2022 (Annexure P-2), he requested for an escalation and upward revision of tender amount, but the respondents terminated the contract vide letter dated 21.09.2022 (Annexure P-3). As stipulated in Clause 24.2 of the agreement (Anexure P-1), petitioner submitted an appeal before the Appellate Authority which was rejected vide letter dated 01.05.2023 (Annexure P-5). Counsel asserts that the petitioner invoked the arbitration clause by serving notice dated 13.06.2023 (Annexure P-6) which has been turned down by the respondents vide their communication dated 11.07.2023 (Annexure P-7).

3. Upon notice, petition has been contested by the respondents by filing a response wherein they have made a reference to Annexures R-2 to R-4 and submit that the petitioner had executed affidavit stating that he will not claim any extra amount for the work and will not go for arbitration.

4. Learned State counsel contends that petitioner did not execute the work under the agreement and after it furnished an affidavit, performance security, bank guarantee etc., was released to the petitioner.

5. Countering him, counsel for the petitioner submits that the affidavit of the petitioner was under an act of financial duress as the security as well as the bank guarantee were lying deposited with the respondents.

6. I have heard counsel for the parties and considered their respective submissions.

7. It is evident from the submissions of the counsel for the parties that the contract was awarded to the petitioner and a dispute has arisen between them.

Petitioner has exhausted the pre-reference mechanism and also served a notice

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invoking the arbitration Clause. Whether the affidavits have been executed by the petitioner voluntarily or under coercion are matters which are required to be examined by the Arbitrator as has been held by the Hon'ble Supreme Court in judgments rendered in ***R.L. Kalathia & Co. Versus State of Gujarat AIR 2011 SCC 754 and Union of India Versus Parmar Construction Company 2019(5) RCR (Civil)302.***

8. Reliance placed by the State counsel upon the judgment of the Supreme Court rendered in **NTPC Limited Vs. SPML Infra Limited** (2023) 9 SCC 385, would not help him. In this case, Supreme Court found that the SPML Infra had approached the High Court for release of Bank Guarantees, but did not raise any claim in the body or prayer of the writ petition. A settlement agreement was arrived at during the pendency of the petition, Bank Guarantees were released and SPML Infra withdrew the writ petition. One month later, after revoking the settlement agreement, SPML Infra filed petition under Section 11(6) of the Act alleging coercion and economic duress in the execution of settlement agreement. In this background, Supreme Court held that the allegation of coercion, etc., lacks bonafide and there was no pending claims. This judgment is not applicable to the facts of the instant petition.

9. Accordingly, petition is allowed. Hon'ble Mr. Justice Adarsh Kumar Goyal, a former Judge of Supreme Court of India r/o C-2/24, Safdarjung Development Area, New Delhi, 110016, Mobile No.9910213040, is appointed as the sole Arbitrator to adjudicate the dispute between the parties.

10. Parties are directed to appear before the learned Arbitrator on the date, time and place to be fixed and communicated by the learned Arbitrator at his convenience.

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- 11. Needless to mention, the parties will be at liberty to raise all the claims/defences/counter claims/pleas before the learned Arbitrator.
- 12. Copy of the order be sent to the appointed Arbitrator.

12.02.2024
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**(SUVIR SEHGAL)
JUDGE**

Whether speaking/reasoned: Yes/No
Whether reportable: Yes/No