



2024:DHC:7129



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IN THE HIGH COURT OF DELHI AT NEW DELHI

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ARB.P. 66/2024

M/S GARG ENTERPRISES

.....Petitioner

Through: Mr. S.W. Haider and Ms. Pooja
Dua, Advs.

versus

UNION OF INDIA

.....Respondent

Through: Ms. Garima Sachdeva, Sr. PC
with Ms. Divyanshi Maurya, Adv.**CORAM:****HON'BLE MR. JUSTICE C. HARI SHANKAR****JUDGMENT (ORAL)**

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12.09.2024

1. This is a petition under Section 11(6) of the Arbitration and Conciliation Act, 1996¹, seeking reference of the disputes between the parties to arbitration.

2. The dispute arises in the context of a contract agreement dated 19 November 2019 between the petitioner and the respondent, for carrying out certain civil works. The agreement was subject to the General Conditions of Contract (GCC), which apply to railway contracts. Clauses 63 to 64(1)(ii) of the GCC reads thus:

“63. Reconciliation of disputes: All disputes and differences of any kind whatsoever arising out of or in connection with the contract, whether during the progress of the work or after its completion and whether before or after the determination of the contract, shall be referred by the Contractor to the "Chief Engineer" or "Divisional Railway Manager" through "Notice of Dispute" provided that no

¹ “the 1996 Act”, hereinafter



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such notice shall be served later than 30 days after the date of issue of Completion Certificate by the Engineer. Chief Engineer or Divisional Railway Manager shall, within 30 days after receipt of the Contractor's "Notice of Dispute", notify the name of conciliator(s) to the Contractor.

The Conciliator(s) shall assist the parties to reach an amicable settlement in an independent and impartial manner within the terms of contract.

If the parties reach agreement on a settlement of the dispute, they shall draw up and sign a written settlement agreement duly signed by Engineer In-charge, Contractor and conciliator(s). When the parties sign the settlement agreement, it shall be final and binding on the parties.

The parties shall not initiate, during the conciliation proceedings, any arbitral or judicial proceedings in respect of a dispute that is the subject matter of the conciliation proceedings.

The conciliation proceedings shall be terminated:

By the signing of the settlement agreement by the parties on the date of agreement; or

- By written declaration of the conciliator, after consultation with the parties, to the effect that further efforts at conciliation are no longer justified, on the date of declaration; or

- By a written declaration of any party to the conciliator to the effect that the conciliation proceedings are terminated, on the date of declaration; or

63.1 Matters Finally Determined by the Railway: All disputes and differences of any kind whatsoever arising out of or in connection with the contract, whether during the progress of the work or after its completion and whether before or after the determination of the contract, shall be referred by the Contractor to the GM and the GM shall, within 120 days after receipt of the Contractor's representation, make and notify decisions on all matters referred to by the Contractor in writing provided that matters for which provision has been made in Clauses 8, 18, 22(5), 39, 43(2), 45(a), 55, 55-A(5), 57, 57A, 61(1), 61(2) and 62(1) of Standard General Conditions of Contract or in any Clause of the Special Conditions of the Contract shall be deemed as 'excepted matters' (matters not arbitrable) and decisions of the Railway authority, thereon shall be final and binding on the Contractor; provided further that 'excepted matters' shall stand specifically excluded from the purview of the



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Arbitration Clause.

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 63.1 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)(a): 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 or difference, 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)(ii)(b): The parties may waive off the applicability of Sub-Section 12(5) of Arbitration and Conciliation (Amendment) Act 2015, if they agree for such waiver in writing, after dispute having arisen between them, in the format given under Annexure XV of these conditions."

3. Certain features of the aforesaid scheme of reconciliation of resolution of dispute need to be noticed.

4. Though Clause 63 of the GCC envisages settlement of dispute by reconciliation, there is no stipulation, either in any of the clauses, which requires the party to exhaust the provision for reconciliation in Clause 63 before proceeding under Clauses 63.1 or 64.

5. Clause 63.1 envisages dispute and difference arising between



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the parties being referred by the contractor to the General Manager², who, within 120 days of receipt of the contractor's representation, was required to notify decisions on all matters except those which are regarded as "excepted" matters. Clause 63.1, however, does not envisage reference of the disputes to arbitration.

6. Reference to arbitration is specifically covered by Clause 64.

7. Clause 64(1)(i) is interestingly worded. Vivisected into its individual components, the clause envisages a dispute between the contractor and the railways being referred to arbitration in one of four circumstances, which are

- (a) in the event of any dispute or difference arising between the contractor and the railways as to the construction or operation of the contract, or
- (b) any dispute or difference arising with respect to the respective rights and liabilities of the parties on any matters in question, or
- (c) any dispute or difference as to withholding by the railway of any certificate to which the contractor may claim itself to be entitled, or
- (d) if the railway fails to take a decision within 120 days, (which obviously harks back to Clause 63.1).

8. These are distinct circumstances in which arbitration can be invoked, not made interdependent on each other. As such, the dispute

² "GM", hereinafter



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is straight away referable to arbitration even under the first circumstance (a) envisaged in Clause 64(1)(i).

9. Clause 64(1)(i) goes on, however, to stipulate that the notice for referring the dispute to arbitration is to be issued by the contractor “after 120 days but within 180 days of his presenting his final claims on disputed matters”.

10. Mr. Haider, learned Counsel for the petitioner candidly acknowledges that, strictly speaking, this clause may not have been adhered to while issuing the Section 21 notice to the respondent, on 20 September 2023. However, he submits that the respondent, in its reply, did not contest the referability of the dispute to arbitration on the ground that 120 days had not lapsed from the date of submission of the final bill by the petitioner, but contended, rather, that the disputes were not referable as the petitioner had issued a no claim certificate. In other words, the respondent was seeking to contest the merits of the petitioner’s claim, by pleading accord and satisfaction.

11. Mr. Haider also points out that, even in the reply filed to the present petition, the respondent has not pleaded that the dispute should not be referred to arbitration because the petitioner has not waited for 120 days after presenting his final bill before issuing Section 21 notice.

12. In such cases, the Court cannot be unduly hypertechnical, and has to take a pragmatic view, in the interest of speedy resolution of the



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dispute, which is the very *raison d'être* of the arbitral process. The Supreme Court has, in its decisions in *Demerara Distilleries Pvt Ltd v. Demerara Distillers Ltd*³ and *Visa International Ltd v. Continental Resources USA Ltd*⁴, taken a liberal view of such clauses and has held that, where the correspondence between the parties indicates that there is no reasonable chance of any rapprochement or reconciliation, it would be futile to relegate the parties to that exercise and the interest of justice would require referring the dispute to arbitration, where a Section 21 notice stands issued in accordance with law.

13. As the respondent has questioned the entitlement of the petitioner to its claims on merits, any relegating of the petitioner to the GM of the respondent at this stage would merely protract proceedings and would serve no useful purpose whatsoever. To use the word of the Supreme Court, it would be a mere “empty formality”.

14. In that view of the matter, as the parties have not been able to arrive at a consensus regarding arbitration, following the decision of the Supreme Court in *SBI General Insurance Co Ltd v Krish Spinning*⁵ this Court has to refer the disputes to arbitration.

15. The claim amount of the petitioner is stated to be in the region of ₹ 2.16 crores.

16. Accordingly, this court appoints Mr. Alok Aggarwal,

³ (2015) 13 SCC 610

⁴ (2009) 2 SCC 55

⁵ 2024 SCC OnLine SC 1754



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Additional District & Sessions Judge (Retd.), Delhi (Mob: 9910384729) as the arbitrator to arbitrate on the disputes between the parties.

17. The learned arbitrator shall be entitled to charge fees as per the Fourth Schedule of the 1996 Act.

18. The learned arbitrator is also requested to file requisite disclosure under Section 12(2) of the 1996 Act within a week of entering on the reference.

19. The petition stands allowed in the aforesaid terms.

C.HARI SHANKAR, J

SEPTEMBER 12, 2024/aky

Click here to check corrigendum, if any