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IN THE HIGH COURT OF DELHI AT NEW DELHI

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ARB.P. 220/2024 & I.A. 33523/2024

**M/S INTERNATIONAL ENGINEERS AND
PROJECT CONSULTANTS LIMITED**

.....Petitioner

Through: Mr Himanshu Mahajan and Mr
Lakshay Chhabra, Advs.

versus

UNION OF INDIA AND ANR

.....Respondents

Through: Ms Uma Prasuna Bachu, SPC for
UOI.

CORAM:

HON'BLE MR. JUSTICE JASMEET SINGH

ORDER

21.10.2024

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1. This is a petition filed under Section 11(6) of the Arbitration and Conciliation Act, 1996 seeking appointment of the Sole Arbitrator for adjudication of disputes between the parties wherein the learned Sole Arbitrator held that the mandate of the Arbitral Tribunal stood terminated.
2. The respondents invited tender *vide* Notice dated 13.05.1996. The petitioner participated in the same and Letter of Acceptance dated 30.01.1997 was issued to the petitioner by the respondents. Thereafter, the parties herein entered into a Contract Agreement dated 12.05.1997.
3. The arbitration clause is Clause 1 of the said Agreement which reads as under:-



“(1) DEMAND FOR ARBITRATION:

(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 of 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 a reasonable time, then and in any such case, save the “excepted matters” referred to in the Clause of these conditions, the Contractor after 90 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.

(ii) The demand for arbitration shall specify the matters which are I question dispute or difference. Only such dispute(s) or difference(s) in respect of which the demand has been made shall be referred to arbitration and other matters shall not be inclined in the reference.

(iii) If the Contractor(s) does/do not prefer his/their specific and final claims in writing within a period of 90 days receiving the intimation from the Government 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.”



4. Since the disputes had arisen between the parties, the petitioner invoked the arbitration *vide* legal notice dated 26.12.2000.
5. This Court *vide* Order dated 09.05.2017 substituted the erstwhile Arbitrator and appointed Justice Sunita Gupta (Retd. Judge of this Court) as the Sole Arbitrator.
6. The learned Sole Arbitrator *vide* Order dated 06.01.2024 terminated the mandate of the Arbitral Tribunal. Hence the present petition.
7. Notice was issued to the respondents on 15.07.2024.
8. An application being I.A. 33523/2024 is filed seeking substitution of the respondents with Union of India through GM/South Eastern Railway, Garden Reach, Kolkata and PCSTE/South Eastern Railway, Garden Reach, Kolkata. The basis of said application is a Letter dated 20.12.2023 issued by the Ministry of Railways wherein para (b) is extracted below:-

“b) In case the works of the contract being transferred belongs to more than one Railway, then associated court & arbitration cases shall be dealt by the Railway having higher TKM/quantum of work & accordingly these may transferred from CORE to Zonal Railways concerned before its closure.”
9. The same is disputed by Mr Mahajan, learned counsel for the petitioner on the ground that the same is only regarding monitoring of the cases and not to take effective steps for appointment of an Arbitrator.
10. I am in complete agreement with the submission advanced by the learned counsel for the petitioner.
11. The Letter dated 20.12.2023 reads as under:-




भारत सरकार GOVERNMENT OF INDIA
रेल मंत्रालय MINISTRY OF RAILWAYS
(रेलवे बोर्ड) (RAILWAY BOARD)

No.2023/O&M/3/4 New Delhi, Dated: 20/12/2023

**The General Manager,
All Indian Railways/PUs/Other Units,
DG/NAIR & DG/RDSO
CAO/FLW, Patiala, CAO/WPO, Patna & CAO/RWP, Bela**

Sub: Guidelines regarding monitoring of court cases pending with CORE and its projects.
Ref.: Board's OM No. 2023/GS(Elect)/161/31/2023 Dated 11.09.2023

It has been decided that court and arbitration cases pending with CORE and its project units should be distributed as below:

- The Zonal Railways, in whose jurisdiction the work related to contract falls, shall deal with the court & arbitration cases. The ongoing court cases may be transferred to the respective Zonal Railways by CORE before its closure.
- In case the works of the contract being transferred belongs to more than one Railway, then associated court & arbitration cases shall be dealt by the Railway having higher TKM/quantum of work & accordingly these may transferred from CORE to Zonal Railways concerned before its closure.
- The store related court cases, normally cover number of Zonal Railways, may be transferred to NCR and accordingly all court cases related to Store contract of CORE shall be dealt by NCR. Corresponding manpower may be transferred from CORE to NCR to deal such cases.

2. The above issues with the approval of competent authority.


(T. Srinivas)
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Copy to:
CRB & CEO, MF, M/Infra, MO&BD, M/TRS
DG/HR, DG/Safety, DG/RPF
EINGS(Electricals)

Copy for information:
EDPG/MR, EDPG/MoSR(D), EDPG/MoSR(I)

12. A perusal of the said Letter and more particularly the subject clause indicates that it is regarding the guidelines for monitoring of court cases pending with CORE and its projects. Further, on perusal of the arbitration clause between the parties, it shows that in case of a



dispute between the parties, the same were to be referred to the 'Arbitration'. The guidelines issued *vide* letter dated 20.12.2023 cannot unilaterally overrule or overwrite the terms of the said Agreement between the parties. In addition, the erstwhile Arbitrator was also appointed by this Court only.

13. For the said reasons, the petition is allowed and the following directions are issued:-

- i) Mr. Brij Bhushan Gupta, Senior Advocate (Mob. No. 9811348989) is appointed as a Sole Arbitrator to adjudicate the disputes between the parties.
- ii) The arbitration will be held under the aegis of the Delhi International Arbitration Centre, Delhi High Court, Sher Shah Road, New Delhi (hereinafter, referred to as the 'DIAC').
- iii) The remuneration of the learned Sole Arbitrator shall be in terms of DIAC (Administrative Cost and Arbitrators' Fees) Rules, 2018.
- iv) The learned Sole Arbitrator shall commence the proceedings from the stage where it has been left by the erstwhile Sole Arbitrator. Further, the learned Sole Arbitrator shall be entitled to take technical opinion, if required.
- v) The parties agreed that they shall pay consolidated fees of Rs. 5 lakhs to the learned Sole Arbitrator since the matter is only for final hearing and passing of the Award. The amount of Rs. 5 lakhs shall be shared in equal proportion.
- vi) The learned Arbitrator is requested to furnish a declaration in terms of Section 12 of the Act prior to entering into the



reference.

- vii) The parties shall approach the learned Arbitrator within two weeks from today.

14. With these directions, the present petition is disposed of.

JASMEET SINGH, J

OCTOBER 21, 2024

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Click here to check corrigendum, if any