



\$~9

*

IN THE HIGH COURT OF DELHI AT NEW DELHI

+

ARB.P. 353/2024

VISION TRANSIT PRIVATE LIMITED

..... Petitioner

Through: Mr. Naman Joshi with Mr. Guneet Sidhu, Mr. Radharaman Rajoriya and Mr. Rahul, Advocates.

versus

DEPARTMENT OF TRANSPORT GOVERNMENT OF NCT OF DELHI & ORS.

..... Respondents

Through: Ms. Harshita Nathrani, Advocate for Mr. Sameer Vashisht, ASC (Civil) for R-1 and 2.
None for R-3.

CORAM:

HON'BLE MR. JUSTICE ANUP JAIRAM BHAMBHANI

ORDER

24.05.2024

%

By way of the present petition filed under section 11 of the Arbitration & Conciliation Act 1996 ('A&C Act'), the petitioner seeks appointment of a Sole Arbitrator to adjudicate upon the disputes that are stated to have arisen with respondents Nos.1 and 2 from Concession Agreement dated 21.03.2023 ('Concession Agreement').

2. Notice on this petition was issued on 03.04.2024; consequent whereupon reply dated 11.05.2024 has been filed by respondent No.1/Department of Transport, Govt. of NCT of Delhi.
3. Mr. Naman Joshi, learned counsel for the petitioner has drawn the attention of this court to clause 22.2 of the Concession Agreement which comprises the arbitration agreement; and contemplates reference of disputes between the parties to arbitration in accordance with the A&C Act; with the 'place' of arbitration being Delhi.



4. For completeness, it may be recorded that a separate territorial jurisdiction provision is also contained in clause 24.3 of the Concession Agreement, which subjects the contract between the parties to the jurisdiction of competent courts at Delhi.
5. As per the record, the petitioner invoked arbitration *vide* Notice dated 08.02.2024, to which the respondents have not sent any reply.
6. Upon being queried, Mr. Joshi, learned counsel for the petitioner submits, that though respondent No.2/Delhi Integrated Multi Modal Transit System Limited is not a signatory to the Concession Agreement, however the Request for Qualification and Proposal ('RFQP') dated 30.09.2021 issued by respondent No.1 inviting bids for the Concession Agreement was prepared by respondent No.2; respondent No.2 was appointed by respondent No.1 to act as the integrated mechanism for project preparation work and for management of the bidding process for selection of suitable operators; and furthermore, respondent No.2 was also the designated authority concerning the achievement of project milestones in terms of article 10 read with schedule 6 of the Concession Agreement. It is pointed-out that this is evident from communications dated 19.06.2023, 04.09.2023 and 11.09.2023 exchanged between the petitioner and respondent No.2, copies of which have been appended to the petition.
7. Insofar as respondent No.3 is concerned, on being queried, Mr. Joshi submits that respondent No. 3 is the bank that had issued a bank guarantee in relation to the transaction from which disputes have arisen; but the petitioner is not claiming any relief against the bank;



and that therefore, the bank would not be a contesting party in the arbitral proceedings.

8. In view of the above, Mr. Joshi submits, that only the petitioner and respondents Nos.1 and 2 be referred to arbitration.
9. After making some submissions, Ms. Harshita Nathrani, learned counsel appearing for respondents Nos.1 and 2 submits, that they leave it to the court to pass appropriate orders in the matter.
10. On a plain reading of the Concession Agreement and the RFQP, it is seen that *prima-facie* respondent No.2 is not alien to the transaction. Besides, whether or not respondent No.2 is to be excluded from the scope of arbitration since it is not a signatory to the agreement or for any other reason, would require closer consideration of the evidence in the matter, so as to parse-out the role of respondent No.2 in the transaction. It cannot however be said *at this stage*, that respondent No.2 should not be referred to arbitration. In this respect, this court notices the mandate of the Supreme Court in paras 169 and 170 of ***Cox & Kings vs. SAP India (P) Ltd.***¹ to the effect that the referral court should leave it to the arbitral tribunal to decide whether a non-signatory party is indeed a party to the arbitration agreement on the basis of factual evidence and application of legal doctrine.
11. Upon a conspectus of the averments contained in the petition, the stand taken by the respondents Nos.1 and 2, and the submissions made at the Bar, this court is satisfied that there is a valid and

¹ (2024) 4 SCC 1



subsisting arbitration agreement between the parties; that this court has territorial jurisdiction to entertain and decide the present petition; and also that the disputes that are stated to have arisen between the petitioner and respondents Nos.1 and 2, as set-out *inter-alia* in invocation notice dated 08.02.2024, do not appear *ex-facie* to be non-arbitrable.

12. Accordingly, the present petition is allowed and **Hon'ble Mr. Justice Gautam Shirish Patel, former Judge of the High Court of Judicature at Bombay (Cellphone No.: +919821088711)** is appointed as the learned Sole Arbitrator to adjudicate upon the disputes between the petitioner and respondents Nos.1 and 2.
13. The learned Sole Arbitrator would furnish to the parties requisite disclosures as required under section 12 of the A&C Act; and in the event there is any impediment to the appointment on that count, the parties are given liberty to file an appropriate application in this court.
14. The learned Arbitrator shall be entitled to fee in accordance with Fourth Schedule to the A&C Act; or as may otherwise be agreed to between the parties and the learned Arbitrator.
15. Parties shall share the arbitrator's fee and arbitral costs, equally.
16. All rights and contentions of the parties in relation to the claims/counter-claims are kept open, to be decided by the learned Arbitrator on their merits, in accordance with law.
17. Parties are directed to approach the learned Arbitrator appointed within 04 weeks.
18. A copy of this order be communicated by the Registry *via* e-mail to the learned Sole Arbitrator, as also to learned counsel for the parties.



19. The petition stands disposed-of in the above terms.
20. Other pending applications, if any, also stand disposed-of.

ANUP JAIRAM BHAMBHANI, J

MAY 24, 2024
ds