



2024:DHC:2399



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\* **IN THE HIGH COURT OF DELHI AT NEW DELHI*****Date of Decision: 21<sup>st</sup> March, 2024***

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**O.M.P. (T) (COMM.) 20/2024****ZANGAS-KPTL CONSORTIUM**

..... Petitioner

Through: Ms. Niyati Kohli, Ms. Madhavi  
Agrawal, Mr. Pranav Saigal and Ms.  
Anu Tripathi, Advs. (M:  
9999194050)

versus

**GAIL INDIA LTD.**

..... Respondent

Through: Mr. Azmat H. Amanullah, Adv. (M:  
9810612316)**CORAM:****JUSTICE PRATHIBA M. SINGH****Prathiba M. Singh, J.(Oral)**

1. This hearing has been done through hybrid mode.
2. This is a petition filed by the Petitioner-Zangas KPTL Consortium under Section 15 of the Arbitration and Conciliation Act, 1996, where the Petitioner is seeking appointment of a substitute Arbitrator in view of the email dated 2nd February, 2024, received from the Deputy Counsel, DIAC that he would not be able to proceed as an Arbitrator.
3. In the present arbitration, disputes arose under the Contract for Laying, Testing and Commissioning of VDPL- Section B. The dispute between the parties is governed by the Contract Agreement dated 24th September, 2008 and the Scope of Work annexed to the Letter of Acceptance dated 7th November, 2008 set out by the Respondent.



4. The Id. Counsels for the parties submit that in the matter before the arbitral tribunal, final arguments had indeed concluded, and the case was only listed for some clarifications on 3rd February, 2024, while the email was received on 2nd February, 2024 from the Deputy Counsel, DIAC. The said email reads:

“To,

Dated:02.02.2024

**Zangas-KPTL Consortium**

**M/s GAIL (India) Limited**

**In the matter of Arbitration between:**

**Zangas-KPTL Consortium**

vs.

**M/ s GAIL (India) Limited**

**Arb. P No.**

**Case No. DIAC/ 891/03-15 (Quote this reference no for future communications with DIAC).**

**Sir/Madam,**

**Please be informed that, Hon'ble Mr. Justice R. C. Chopra (Retd.), (Sole Arbitrator) has recused himself from this matter and henceforth he would not be able to proceed as an Arbitrator in the above-noted matter. Parties are, accordingly, advised to approach Hon'ble High Court of Delhi for appointment of new Arbitrator, in which event the Centre may be informed at the earliest.**

**DIAC shall be keeping the matter in abeyance till further directions from the Court.**

**Regards,**

**Saumya Jaykaran Singh**

**Deputy Counsel**

**+91 9869036104**

**Delhi International Arbitration Centre (DIAC)**

**Delhi High Court, 'S' - Block, Dr. Zakir Hussain Marg,  
New Delhi - 110503**

**Ph: 011-23386492, 23386480”**



Ld. Counsel for the Respondent submits that the petition is not maintainable.

5. In view of the above letter dated 2<sup>nd</sup> February 2024, this Court directed the DIAC on the last date to furnish a report as to the total payment made in the arbitral proceedings to the ld. Sole Arbitrator who has now resigned. The said direction reads as under:

*“8. Let the DIAC furnish a report as to the total payment made in this arbitral proceeding to the ld. Sole arbitrator who has now resigned. In addition let a list of arbitration cases referred to this sole arbitrator be also placed before the Court. List for further consideration on 21st March, 2024.”*

6. The report of the DIAC dated 20<sup>th</sup> March, 2024, pursuant to the directions extracted above, reads as under:

*“Sir,*

*We are in receipt of copy of order dated 12.03.2024 (received on 18.03.2024) **Annexure - I**, wherein the centre has been directed to submit a report qua the total payment made to Ld. Arbitrator Mr. Justice R.C. Chopra (Retd.), in the Arbitration matter **M/s Zangas-KPTL Consortium v. M/s GAIL (India) Limited (DAC/891/03-15)**.*

*In this respect, it is submitted that as per the assessment dated 08.09.2015 the total fee assessed was **Rs.15,08,050/-** and accordingly claimed from the parties. However, it transpires that claimant has deposited the entire fee (including the share of Respondent).*

*The breakup of the deposits is as under:-*

| <b>Party</b>    | <b>Fee Payable</b>                           | <b>Fee Deposited</b>                 |
|-----------------|----------------------------------------------|--------------------------------------|
| <b>Claimant</b> | <b>Rs. 7,54,025/-</b><br><b>+ Rs. 5000/-</b> | <b>Rs. 15,08,050</b><br><b>+ Rs.</b> |



|            |                                                           |            |
|------------|-----------------------------------------------------------|------------|
|            | (miscellaneous expense)                                   | 10,000/-   |
| Respondent | Rs. 7,54,025/-<br>+ Rs. 5000/-<br>(miscellaneous expense) | Rs.-5000/- |

*It has further transpired from the record that the Arbitrator has not been paid any fee from the aforesaid deposit in the said Arbitration case, as yet. **However, having regard to the current stage of the proceedings i.e the stage of final arguments, after completion of Respondent's evidence, the Hon'ble Arbitrator is entitled to 60% of the fee, so assessed and deposited. Considering the above, an amount of Rs. 9,04,830/- is to be released to the Hon'ble Arbitrator on completion of the abovementioned proceeding, or earlier, if so requested by him, and the balance Rs.6,03,220/-, shall remain with DIAC for release to the Ld. Arbitrator, if any, appointed upon announcement of award, subject to just exceptions.***

*As regards the list of arbitration cases referred to Ld. Sole Arbitrator Mr. Justice R.C. Chopra (Retd.), under the aegis of DIAC, please find the list annexed herewith as **Annexure-II**.*

*It is, most respectfully, stated that the report may be directed to be placed in the records of OMP(T) (COMM)20/2024 listed on 21.03.2024, towards compliance of the said directions."*

7. The report has now been received as per which a total sum of Rs.15,08,050/- plus administrative expenses have been deposited with the DIAC. The DIAC also reports through the coordinator that no amounts have been released to the Id. Arbitrator as yet. The Court has been informed and as has also been gleaned from the other cases relating to this very Id. Sole



Arbitrator, that the said Arbitrator has resigned from all the DIAC arbitrations due to medical reasons.

8. Under such circumstances, there is no option but to appoint a new arbitrator to adjudicate the disputes. Accordingly, let the DIAC release the fee of the Id. Arbitrator in terms of the DIAC Rules, 2023 *i.e.*, 60% for cases which are at the final stage. Schedule F of the Delhi International Arbitration Centre Rules, 2023 has been attached as ***Annexure A*** which describes the stages as also the percentage of fee that is to be released at different stages of arbitral proceedings. Accordingly, ***Justice Mr. G.P. Mathur (retired) [M:9818488322]*** is appointed as Id. Sole Arbitrator to adjudicate the disputes between the parties.

9. The parties shall deposit an additional Rs.5 lakhs (Rs.2.5 lakhs each) for the final hearing and for pronouncement of the award. The DIAC may, accordingly, release Rs. 5.5 lakhs initially to the new Arbitrator and approximately a sum of Rs.5.5 lakhs after the pronouncement of the award to the new Arbitrator.

10. The petition is disposed of in these terms. All pending applications are also disposed of.

**PRATHIBA M. SINGH**  
**JUDGE**

**MARCH 21, 2024**  
*dj/ks*

*corrected & released on 26<sup>th</sup> March, 2024*

**ANNEXURE A****“SCHEDULE F*****Rule for Release of Fee of Arbitrator***  
***( Introduced vide minutes dated 26.10.2020)***

*Fees shall be disbursed stage-wise to the Arbitral Tribunal in the following manner:*

| <b>Sr. No.</b> | <b>Stage of the case</b>                                                                                                                      | <b>Fee payable</b>    |
|----------------|-----------------------------------------------------------------------------------------------------------------------------------------------|-----------------------|
| 1              | Upon 'Framing of issues' or disposal of application under Section 16 or 17 of the Arbitration and Conciliation Act 1996, whichever is earlier | 20% of the total fees |
| 2              | Upon completion of Claimant's Evidence (on merits of the dispute).                                                                            | 20% of the total fees |
| 3              | Upon completion of Respondent's Evidence (on merits of the dispute).                                                                          | 20% of the total fees |
| 4              | After passing of the Award                                                                                                                    | 40% of the total fees |

***Note:***

*1) The aforesaid fee schedule shall also apply to following cases:*

- a) Matters stayed or adjourned sine die or pending before the NCLT or like authorities.*
- b) Recusal by the Arbitrator(s)*
- c) Demise of the Arbitrator(s) (Fees will be paid to his/her legal heirs).*
- d) Proceedings terminated or withdrawn.*
- e) Termination of the mandate of the Arbitrator(s) by efflux of time as provided in the Act.*

*2) In case of occurrence of any of the events mentioned*



*in point 1) prior to framing of issues, it shall be the discretion of the Chairperson of the Committee to determine the fees payable to the Arbitrator.*

*3) In cases decided on preliminary issue, it shall be the discretion of the Chairperson of the Committee to release such fees of the Arbitrator as may be deemed appropriate having regard to factors, which may include nature of the claim, number of hearings, etc.*

*4) If the application under Section 16 is allowed by the Arbitrator subsequent to framing of issues, then the Arbitrator shall be entitled to the fees as payable up to that stage.*

*5) It is clarified that each slab in the above table shall apply only upon conclusion of the relevant stage and in case a particular stage is not concluded, the previous slab shall apply.*

***6) Termination of proceedings on settlement between the parties*** - *In case of settlement between the parties to a dispute, the Arbitral Tribunal shall be paid minimum of 1/3rd of the total fees if such settlement is arrived at before conclusion of the claimant's evidence. If the settlement is arrived at any subsequent stage, the fees of the Arbitral Tribunal shall be paid as per the above Schedule depending on the stage at which the settlement is arrived at.*

*7) Notwithstanding this Schedule, it shall be the discretion of the Chairperson of the Committee to fix/revise the fees payable to the Arbitrator on case to case basis."*