



2024:DHC:6688



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**+ **ARB.P. 524/2024**

M/S SHIVAH INFRAVENTURE LLPPetitioner
Through: Mr. Syed Wasif Haider, Adv.
with Ms. Pooja Dua, Adv.

versus

UNION OF INDIARespondent
Through: Mr. Vivek Sharma, SPC for
UOI

CORAM:
HON'BLE MR. JUSTICE C. HARI SHANKAR

ORDER (ORAL)% **30.08.2024**

1. Though, on the last date of hearing, the petitioner was directed to address the court on the issue of whether the petitioner has complied with the pre-arbitral protocol envisaged in the General Conditions of Contract¹, governing the relationship between the parties, Mr. Vivek Sharma, learned Counsel for the respondent has handed over, across the Bar, a letter, bearing an illegible date but which appears to have issued some time in 2024, which purports to be a reply to the notice invoking arbitration under Section 21 of the Arbitration and Conciliation Act 1996², issued by the petitioner to the respondent on 13 January 2024.

2. The dispute between the parties arises out of a contract

¹ "GCC" hereinafter
² "the 1996 Act", hereinafter

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agreement executed between the parties, whereunder the petitioner was engaged by the respondent to carry out certain civil works. The contract is admittedly subject to the GCC.

3. Clause 63 of the GCC and its various sub-clauses envisaged resolution of disputes by conciliation and arbitration. However, the manner in which the clauses are worded, do not indicate that conciliation has to be exhausted before recourse to arbitration.

4. The petitioner addressed a notice to the respondent under Section 21 of the 1996 Act on 13 January 2024, seeking reference of the dispute between the petitioner and the respondent to arbitration.

5. On the respondent failing to reply, the petitioner approached this Court by means of the present petition.

6. Clause 64(3)(b)(ii) of the GCC stipulates, in respect of arbitration, thus:

“64.(3)(b): Appointment of Arbitrator where applicability of Section 12 (5) of Arbitration and Conciliation Act has not been waived off:

(ii) In cases where the total value of all claims in question added together exceed ₹ 50,00,000/- (Rupees Fifty Lakh), the Arbitral Tribunal shall consist of a Panel of three (3) retired Railway Officer, retired not below the rank of Senior Administrative Grade Officer, as the arbitrators. For this purpose, the Railway will send a panel of at least four (4) names of retired Railway Officer(s) empanelled to work as Railway Arbitrator duly indicating their retirement date to the Contractor within 60 days from the day when a written and valid demand for arbitration is received by the General Manager.

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Contractor will be asked to suggest to General Manager at least 2 names out of the panel for appointment as Contractor's nominee within 30 days from the date of dispatch of the request by Railway. The General Manager shall appoint at least one out of them as the Contractor's nominee and will, also simultaneously appoint the balance number of arbitrators either from the panel or from outside the panel, duly indicating the 'Presiding Arbitrator' from amongst the 3 arbitrators so appointed. General Manager shall complete this exercise of appointing the Arbitral Tribunal within 30 days from the receipt of the names of Contractor's nominees. While nominating the arbitrators, it will be necessary to ensure that one of them has served in the Accounts Department.”

7. On 26 April 2024, learned Counsel for the respondent intimated the Court that the respondent was in the process of constituting a panel of names from which the arbitrator would be appointed in accordance with the agreed mechanism.

8. Today, Mr. Vivek Sharma, learned Senior Panel Counsel for the respondent, has, as already noted, towards the commencement of this order, handed over a letter bearing an illegible date, which forwards the panel of four retired Railway officers to the petitioner from which two names to be appointed as the petitioner's arbitrators.

9. The said letter can have no meaning or legal effect, as the prerogative of the respondent to forward the panel of names to the petitioner under Clause 64(3)(b)(ii) of the GCC had to be exercised within 60 days from the date of receipt, by the respondent, of the Section 21 notice issued by the petitioner. That period of 60 days expired on or around 13 March 2024. Given the fact that, on 26 April 2024, the respondent had informed this Court that it was still in the

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process of preparing the panel of names to be forwarded to the petitioner, it is clear that, as on 13 March 2024, no panel of names was in place or had been forwarded to the petitioner. The respondent has not, therefore, acted in terms of Clause 64(3)(b)(ii) of the GCC. The law does not permit it to do so belatedly. On the expiry of 60 days from 13 January 2024, the right of the respondent to act as per Clause 64(3)(b)(ii) stood extinguished. The prerogative of the respondent to forward a panel of names to the petitioner under Clause 64(3)(b)(ii) of the GCC did not, therefore, survive.

10. The result is that, the court has to step in under Section 11(6) of the 1996 Act and appoint an arbitrator.

11. The stipulations in the GCC, regarding the arbitrator who has to arbitrate on the dispute, do not bind the Court.

12. It is stated by learned Counsel for the petitioner that the petitioner's claims are in the region of around approximately ₹ 70 lakhs.

13. Accordingly, this Court appoints Mr. Ravinder Agarwal, Advocate (Mob: 9810056263), as the arbitrator to arbitrate on the dispute between the parties.

14. The arbitrator shall be entitled to charge fees in accordance with the Fourth schedule to the 1996 Act.

15. The learned Arbitrator shall file the requisite disclosure under

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Section 12(2) of the 1996 Act within a week of entering on the reference.

16. The petition stands disposed of in the above terms.

C. HARI SHANKAR, J.

AUGUST 30, 2024

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Click here to check corrigendum, if any

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