



2024:DHC:5140



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IN THE HIGH COURT OF DELHI AT NEW DELHI

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ARB.P. 1020/2023 & I.A. 26028/2023

TEEMS INDIA TOWERLINES PRIVATE LIMITED

.....Petitioner

Through: Mr. Nivesh Sharma, Mr. Aditya Mishra, Ms. Ritu Singh, Ms. Vidhi Singh and Mr. Srijan Mishra, Advs.

versus

POWERGRID CORPORATION OF INDIA LIMITED & ANR.

.....Respondents

Through: Mr. Apoorv. P. Tripathi, Mr. Dheeresh. K. Dwivedi and Mr. Apaan Mittal, Advs. for Respondent 1.
Mr. Praveen Alok, Adv. for Respondent 2.

CORAM:**HON'BLE MR. JUSTICE C. HARI SHANKAR****ORDER (O R A L)**

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08.07.2024

1. This is a petition under Section 11 of the Arbitration and Conciliation Act, 1996¹ emanating from a tripartite agreement executed among the petitioner, Respondent 1 Power Grid Corporation of India Ltd² and Respondent 2 EMC Ltd³ on 25 March 2019.

2. Certain works, which had originally been contracted by PGCIL to EMC were, thereafter, awarded to the petitioner consequent on EMC being subjected to a Corporate Insolvency Resolution Process⁴ *vide* order dated 12 November 2018 of the learned National Company

¹ "the 1996 Act"

² "PGCIL"

³ "EMC"

⁴ CIRP



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Law Tribunal⁵ and the consequent appointment of an Insolvency Resolution Professional⁶ to oversee the affairs of EMC by order dated 6 February 2019 passed by the learned NCLT. According to the petitioner, certain invoices placed by the petitioner remain unpaid, as a result of which the present dispute has arisen.

3. The tripartite agreement contains the following dispute resolution clause:

“6.0 GOVERNING LAW AND AMICABLE DISPUTE RESOLUTION

6.1 The parties to this agreement shall amicably resolve any dispute arising from this Tripartite Agreement. If the parties are unable to reach agreement on the meaning or interpretation of any clauses set out hereto or any other matters arising out of this Tripartite Agreement, the matter in dispute shall be referred to official in the level of Chief General Manager of POWERGRID to be nominated by Executive Director (NERPSIP) of POWERGRID. The so appointed official of POWERGRID will convey his decision in writing.

In case decision of so nominated official is not acceptable to any party, then arbitration shall be conducted in accordance with Arbitration and Conciliation Act, 1996 as amended from time to time in the manner as prescribed in the Principal Contract(s).

6.2 This Tripartite Agreement shall be governed by and construed in accordance with the Laws of India and the Courts at Delhi shall have exclusive jurisdiction in relation to the interim reliefs and other reliefs as provided under the Arbitration and Conciliation Act, 1996 and its amendments thereof. The arbitration proceedings shall be conducted in English, the venue for the arbitration proceedings shall be conducted in English, the venue for the arbitration proceedings will be at New Delhi and the award given by the arbitral tribunal shall be final and binding. The costs, charges, fees and expenses of the Arbitrator shall be borne equally by the Parties (EMC and POWERGRID). The Parties shall bear their own legal expenditures and other costs pertaining to the arbitration proceedings.”

⁵ “the learned NCLT”

⁶ “IRP”



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4. Though the tripartite agreement envisages a pre-arbitral protocol, it appears that the said protocol was not followed before institution of the present petition, though the petitioner did serve a notice to the respondent under Section 21 of the 1996 Act, invoking arbitration on 10 May 2023.

5. This Court, by order dated 9 October 2023, recorded the submission of PGCIL that the pre-arbitral protocol would be followed and decision would be taken within 60 days.

6. Inasmuch as Respondent 2 was, consequent to the CIRP, liquidated, and now stands sold as a going concern without any pending liability, to another company, the petitioner does not press its claims qua Respondent 2, and restricts its claim to Respondent 1.

7. Mr. Tripathi, learned counsel for the PGCIL, submits that the matter was referred to the appropriate authorities in terms of Clause 6.1 of the tripartite agreement, resulting in PGCIL ultimately denying any liability to the petitioner vis-a-vis decision dated 18 January 2024.

8. Quite obviously, this decision is not palatable to the petitioner.

9. Clause 6.1 envisages, in such a situation, the dispute being referred to arbitration in accordance with the 1996 Act in the manner and as prescribed in the Principal Contract. The tripartite agreement defines the “principal contract” as a compendious expression to refer, collectively, to three contracts.



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10. It is not necessary to enter into the particulars of these three contracts, as it is an admitted position that the petitioner is not a party to any of them. The petitioner is, however, a party to the tripartite agreement dated 25 March 2019 and is, therefore, entitled to the benefit of the arbitration clause contained therein.

11. Mr. Tripathi submits that in the peculiar facts of this case, though the principal contract envisages arbitration of the disputes by a three-member arbitral tribunal, his client is willing for the disputes to be arbitrated by a Sole Arbitrator.

12. In these circumstances, as the parties have not been able to arrive at a consensus regarding the arbitrator who would arbitrate between them, this Court appoints Hon'ble Ms. Justice Asha Menon, (Retd.) (Tel. 9910384664) as the Arbitrator. The learned Arbitrator would arbitrate on the disputes between the parties. The fee of the learned Arbitrator would be fixed as per the Fourth Schedule to the 1996 Act. The learned Arbitrator is also requested to file the requisite disclosure in terms of Section 12 of the 1996 Act within a week of entering out reference.

13. Keeping all issues of fact and law open for decision before the learned Arbitrator, this petition is disposed of in the aforesaid terms with no order as to costs.

C. HARI SHANKAR, J.

JULY 8, 2024/p

Click here to check corrigendum, if any