



2024:DHC:10016



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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Date of Decision : 23.12.2024

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ARB.P. 1376/2024**M/S ARUN KUMAR PUSHPDEEP INFRASTRUCTURE (JV)****.....Petitioner****Through: Mr. Himanshu Upadhyay, Ms. Ruby
Sharma, Advs.****versus****UNION OF INDIA & ANR.****.....Respondents****Through: Mr. Vijay Joshi, Mr. Kautilya Birat,
Mr. Mohit Joshi, Mr. Kuldeep Singh,
Advs.****CORAM:****HON'BLE MR. JUSTICE SACHIN DATTA****SACHIN DATTA, J. (Oral)**

1. The present petition has been filed under section 11(6) of the Arbitration and Conciliation Act, 1996 (hereinafter referred as '*the A&C Act*') seeking appointment of a sole arbitrator to adjudicate the disputes between the parties.

2. The disputes between the parties have arisen in the context of an agreement dated 25.01.2017 executed between the petitioner and respondent for '*Construction of 20 numbers multistoried type-IV quarters. 130 numbers multistoried type-II- Special quarters in Arya Nagar Railway Colony demolishing of existing Railway quarters & service buildings at Railway Colonies, Ghaziabad and other allied works in connection with provision of Road over Bridge near Dhobi Ghat, Ghaziabad*' for a contract price of Rs. 17,97,08.339.21/-.



3. As per the agreement, the work was stipulated to be completed within 18 months from the date of issuance of the work order, however, admittedly, the respondent was granted extensions for completion of the project without imposition of penalty, and the work was completed on 15.04.2023 after a delay of 62 months and 12 days.
4. It is averred in the petition that extension was granted without levying of penalty since the delay in completion of work was attributable to the respondent's failure, *inter alia*, to timely clear the site and provide drawings, designs and layout to the petitioner.
5. The applicable General Conditions of Contract (GCC) contain an arbitration clause in the following terms: -

**“SETTLEMENT OF DISPUTE-INDIAN RAILWAY
ARBITRATION RULES**

64.(1)(i): *Demand of Arbitration – 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 or 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 120 days, then and in any such case, but except in any of the “excepted matters” referred to in Clause 63 of these Conditions, the contractor, after 120 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.*

64.(1)(ii)- *The demand for arbitration shall specify the matters which are in question, or subject to the dispute or difference as also the amount of claim item-wise only such dispute(s) or difference(s) in respect of which the demand has been made, together with counter claims or setoff, given by the Railway, shall be referred to arbitration and other matters shall not be included in the reference.*

64.(1)(iii)- (a) *The Arbitration proceedings shall be assumed to have commenced from the day, a written and valid demand for arbitration is received by the Railway.*

(b) *The claimant shall submit his claim stating the facts supporting the claims*



along with all the relevant documents and the relief or remedy sought against each claim within a period of 30 days from the date of appointment of the Arbitral Tribunal.

(c) The Railway shall submit its defence statement and counter claim(s), if any, within a period of 60 days of receipt of copy of claims from Tribunal thereafter, unless otherwise extension has been granted by Tribunal.

(d) Place of Arbitration: The place of arbitration would be within the geographical limits of the Division of the Railway where the cause of action arose or the Headquarters of the concerned Railway or any other place with the written consent of both the parties.

64(1)(iv)- No new claim shall be added during proceedings by either party. However, a party may amend or supplement the original claim or defence thereof during the course of arbitration proceedings subject to acceptance by Tribunal having due regard to the delay in making it.

64(1)(v)- If the contractor(s) does / do not prefer his / their specific and final claims in writing, within a period of 90 days of receiving the intimation from the Railways 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.

64 (2)- Obligation During Pendency of Arbitration:

Work under the contract shall, unless otherwise directed by the Engineer, continue during the arbitration proceedings, and no payment due or payable by the Railway shall be withheld on account of such proceedings, provided, however, it shall be open for Arbitral Tribunal to consider and decide whether or not such work should continue during arbitration proceedings.

64.(3) Appointment of Arbitrator:

64(3)(a)(i) – In cases where the total value of all claims in question added together does not exceed Rs. 25,00,000 (Rupees twenty five lakh only), the Arbitral Tribunal shall consist of a Sole Arbitrator who shall be a Gazetted Officer of Railway not below JA Grade, nominated by the General Manager. The sole arbitrator shall be appointed within 60 days from the day when a written and valid demand for arbitration is received by GM.

64 (3) (a) (ii)- In cases not covered by the Clause 64 (3) (a) (i), the Arbitral Tribunal shall consist of a Panel of three Gazetted Railway Officers not below JA Grade or 2 Railway Gazetted Officers not below JA Grade and a retired Railway Officer, retired not below the rank of SAG Officer, as the arbitrators. For this purpose, the Railway will send a panel of more than 3 names of Gazetted Railway Officers of one or more departments of the Railway which may also include the name(s) of retired Railway Officer(s) empanelled to work as Railway Arbitrator to the contractor within 60 days from the day when a



written and valid demand for arbitration is received by the GM.

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 the most 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. GM 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 is from the Accounts Department. An officer of Selection Grade of the Accounts Department shall be considered of equal status to be officers in SA grade of other departments of the Railway for the purpose of appointment of arbitrator.

64(3)(a)(iii)- if one or more of the arbitrators appointed as above refused to act as arbitrator, withdraws from his office as arbitrator, or vacates his/their office/offices or is/are unable or unwilling to perform his functions as arbitrator for any reason whatsoever or dies or in the opinion of the General Manager fails to act without undue delay, the General Manager shall appoint new arbitrator / arbitrators to act in his / their place in the same manner in which the earlier arbitrator / arbitrator shall been appointed. Such re-constituted Tribunal may, at its discretion, proceed with the reference from the stage at which it was left by the previous arbitrator(s).

64(3)(a)(iv)- The Arbitral Tribunal shall have power to call for such evidence by way of affidavits or otherwise as the Arbitral Tribunal shall think proper, and it shall be the duty of the parties hereto to do or cause to be done all and reasons shall be detailed enough so that the award could be inferred there from.

64(3)(b)(ii)- A party may apply for corrections of any computational errors, any typographical or clerical errors or any other error of similar nature occurring in the award of a Tribunal and interpretation of a specific point of award to Tribunal within 60 days of receipt of the award.

64(3)(b)(iii)- A party may apply to Tribunal within 60 days of receipt of award to make an additional award as to claims presented in the arbitral proceedings but omitted from the arbitral award.

64 (4) In case of the Tribunal, comprising of three Members, any ruling on award shall be made by a majority of Members of Tribunal. In the absence of such a majority, the views of the Presiding Arbitrator shall prevail.

64 (5) Where the arbitral award is for the payment of money, no interest shall



be payable on whole or any part of the money for any period till the date on which the award is made.

64(6) The cost of arbitration shall be borne by the respective parties. The cost shall inter-alia include fee of the arbitrator(s), as per the rates fixed by Railway Board from time to time and the fee shall be borne equally by both the parties. Further, the fee payable to the arbitrator(s) would be governed by the instructions issued on the subject by Railway Board from time to time irrespective of the fact whether the arbitrator(s) is/are appointed by the Railway Administrative or by the court of law unless specifically directed by Hon'ble court otherwise on the matter.

64 (7): Subject to the provisions of the aforesaid Arbitration and Conciliation Act 1996 and the rules there under and any statutory modifications thereof shall apply to the arbitration proceedings under this Clause. The written and Arbitration valid demand proceedings for shall arbitration be is assumed received to by have the Railway,”

6. It is the case of petitioner that the respondents have not provided/paid for the amount pertaining to GST, use of teak wood instead of Sal wood as well as overhead expenses and loss of profit due to prolongation of the contract while releasing the final payment. Thus, disputes between the parties have arisen on account of alleged failure of respondent to release requisite payment.

7. Disputes having arisen between the parties, the petitioner issued a legal notice dated 23.04.2024 for payment of the aforesaid claimed items. However, the respondent *vide* communication dated 31.05.2024 stated that the claims of the petitioner are baseless and inadmissible.

8. Since the disputes between the parties persisted, the petitioner on 11.06.2024 issued a notice for invocation of arbitration to the respondent. However, the respondent failed to respond.

9. In the above circumstances, the petitioner has approached this Court, through the present petition, seeking the appointment of a sole arbitrator to



adjudicate the dispute.

10. The learned counsel for the respondent does not dispute the existence of arbitration agreement. He accedes to the appointment of an independent Sole Arbitrator by this Court to adjudicate the disputes between the parties.

11. In the above circumstances, since the existence of the arbitration clause is evident from a perusal of the contract, there is no impediment to constituting an arbitral tribunal for adjudicating the disputes between the parties, as mandated in terms of the judgments of the Supreme Court in ***SBI General Insurance Co. Ltd. v. Krish Spinning***, 2024 INSC 532 and ***Interplay between Arbitration Agreements under the Arbitration & Conciliation Act, 1996 & the Indian Stamp Act, 1899, In re***, 2023 SCC OnLine SC 1666.

12. Further, in terms of the judgments of the Supreme Court in ***Perkins Eastman Architects DPC v. HSCC (India) Ltd*** (2020) 20 SCC 760, ***TRF Limited v. Energo Engineering Projects Ltd***, (2017) 8 SCC 377, ***Bharat Broadband Network Limited v. United Telecoms Limited***, 2019 SCC OnLine SC 547 and ***Central Organisation for Railway Electrification Vs. ECI SPIC SMO MCML (JV) A Joint Venture Company***, MANU/SC/1190/2024, it is incumbent on this Court to appoint an independent arbitrator to adjudicate the disputes between the parties

13. Furthermore, the appointment of sole arbitrator would be in consonance of the judgment rendered by this Court in ***M/S Twenty-Four Secure Services Pvt. Ltd. v. M/S Competent Automobiles Company Limited***, 2024/DHC/4601, ***Jhajharia Nirman Ltd. v. South Western Railways***, 2024: DHC:7801 and ***Palghar Road Project Pvt. Ltd. vs State of Maharashtra***, 2024: DHC:8368.



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14. Accordingly, Mr. Justice (Retd.) D.K. Jain, Former Judge, Supreme Court of India (Mob.: +91 9999922288) is appointed as the Sole Arbitrator to adjudicate the disputes between the parties.
15. The learned Sole Arbitrator may proceed with the arbitration proceedings subject to furnishing to the parties requisite disclosures as required under Section 12 of the A&C Act.
16. The learned Sole Arbitrator shall be entitled to fee in accordance with IVth Schedule to the A&C Act; or as may otherwise be agreed to between the parties and the learned Sole Arbitrator.
17. The parties shall share the arbitrator's fee and arbitral costs, equally.
18. 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.
19. Needless to say, nothing in this order shall be construed as an expression of this Court on the merits of the case.
20. The present petition stands disposed of in the above terms.

SACHIN DATTA, J

DECEMBER 23, 2024/sl