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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ W.P.(C) 16256/2024 & CM APPL. 68427/2024, CM APPL.
68428/2024, CM APPL. 68429/2024

M/S. AIREF ENGINEERS PRIVATE LIMITED

.....Petitioner

Through: Ms. Aanchal Basur and Mr. Abhay
Singh, Advocates.

versus

NATIONAL HYDROELECTRIC POWER CORPORATION LTD.
& ANR.Respondents

Through: None.

CORAM:

HON'BLE MR. JUSTICE SANJEEV NARULA

ORDER

22.11.2024

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1. The present writ petition seeks quashing of the notice of invocation of arbitration proceedings dated 17th April, 2023¹ and all the subsequent ancillary proceedings arising therefrom.

2. The grievance of the Petitioner stems from a tender issued by the Respondents for 'Construction of Non-Executive Field Hostel at Sapangini for Prabati H. E. Project, Stage-III, Himachal Pradesh (Pkg: PHEP-III/2006/35)'². The Petitioner participated in the tender process, emerged successful, and was issued a Letter of Award dated 7th November 2006. This

¹ "Invocation Notice"

² "Project"



was followed by the execution of a detailed contract agreement on 2nd December 2006³.

3. Thereafter, disputes arose between the parties regarding suspension of work as well as consequential delay in completion of the project. After exchange of correspondences between the parties, on 02nd December, 2008, the Petitioner invoked Clause 55 of the GCC – i.e., the arbitration clause in the contract, leading to the constitution of the First Arbitral Tribunal comprising three members. The Petitioner submitted its statement of claims on 19th October, 2009 and a revised statement of claims on 9th February 2010.

4. After considering all facts and contentions of the parties, the First Arbitral Tribunal rendered the final award on 02nd September, 2013. The Petitioner submits that since neither of the parties challenged the said award under Section 34 of the Arbitration and Conciliation Act, 1996⁴, it has attained finality.

5. The Petitioner alleges that despite the award attaining finality, the Respondents have now, in an arbitrary manner, once again invoked Clause 55 of the GCC *vide* the impugned Invocation Notice, and sought adjudication of the purported disputes arising out of the same contract through Arbitration, on the ground of refusal/ failure on the part of Petitioner to make the payment of risk and cost amount of INR 41,85,804/-, under Clause 38.2 of the GCC. As such, the Petitioner was called upon to make a nomination of their Arbitrator since the arbitration clause (Clause 55) provides for a three-member Arbitral Tribunal. In light of such invocation

³ “Contract”

⁴ “the Act”



and even though the Petitioner did not nominate an Arbitrator, the Respondent proceeded with the matter and approached the President of the Institute of Engineers (India) for appointment of the Presiding Arbitrator as per Clause 55 of the GCC. As a result, despite the objections of the Petitioner, the Institute of Engineers appointed the Presiding Arbitrator, who in turn, appointed another member as the Petitioner's Nominee Arbitrator, thus completing the constitution of the Second Arbitral Tribunal.

6. The Petitioner urges that the termination letter issued by the Respondent had alleged that the project was still incomplete due to delay attributable to Petitioner, however, in the final award passed by the First Arbitral Tribunal, it was held that the delay was on account of unforeseen circumstances - such as severe weather conditions, passing of High Court orders, suspension of use of raw materials as well as delays in the decision-making process of the officials of Respondents. Thus, the invocation of the arbitration and the constitution of the Second Arbitral Tribunal, which is now scheduled to commence the proceedings on 15th November, 2024, amounts to re-agitation of issues and fixation of liability which have already been decided, constituting abuse of process of law. Since the First Arbitral Award has attained finality, initiating fresh arbitration on the same and issues violates the sanctity and finality of arbitral awards. Compelling the Petitioner, a small private entity, to undergo another round of arbitration against a large and powerful Respondent is oppressive and causes undue hardship.

7. In the above circumstances, the Petitioner has invoked the extraordinary jurisdiction of this Court under Article 226 and 227 of the Constitution, seeking quashing of the second arbitration proceedings



initiated by the Respondent, on the ground of arbitrariness.

8. The Court has considered the aforementioned conditions, however, remains unpersuaded. The Arbitration Act is a self-contained code intended to provide an expeditious and efficient mechanism for the resolution of disputes through arbitration. The Supreme Court in ***Bhaven Construction v. Executive Engineer Sardar Sarovar Narmada Nigam Ltd.***⁵ and ***Deep Industries Ltd. v. ONGCL***⁶, has already observed that in matters relating to arbitration, the exercise of jurisdiction by this Court under Article 226 of the Constitution or supervisory jurisdiction under Article 227 of the Constitution, should be minimal and exercised only in exceptional circumstances, such as where the tribunal lacks inherent jurisdiction or there is a gross miscarriage of justice.

9. The parties entered into a contract containing an arbitration clause, agreeing to resolve disputes through arbitration. The Respondents have invoked this clause in accordance with the contractual terms. Interference by this Court at this stage would undermine the arbitration agreement and the legislative intent of promoting arbitration as an alternative dispute resolution mechanism. The Petitioner contends that the disputes are barred by *res judicata*. However, whether the current claims are indeed barred by *res judicata* or have been settled in the previous arbitration, is a matter that involves examination of facts and the scope of the previous proceedings. Such determinations are within the competence of the Arbitral Tribunal. Section 16 of the Arbitration Act embodies the principle of *kompetenz-kompetenz*, which empowers the Arbitral Tribunal to rule on its own

⁵ (2022) 1 SCC 75

⁶ (2020) 15 SCC 706



jurisdiction, including objections with respect to the existence or validity of the arbitration agreement. Thus, it is not as if the Petitioner is without a remedy. All objections including those related to jurisdiction, *res judicata*, and abuse of process of law can be raised before the Second Arbitral Tribunal, in accordance with law. The Petitioner's apprehension of hardship in undergoing arbitration proceedings does not constitute an exceptional circumstance justifying the exercise of writ jurisdiction.

10. In view of the above analysis, the Court finds no merit in the present writ petition. The Petitioner has not demonstrated any exceptional circumstances warranting interference under Articles 226 and 227 of the Constitution. The issues raised involve factual determinations and contractual interpretations best suited for adjudication by the Arbitral Tribunal.

11. All rights and contentions of the parties are left open. It is made clear that the Court has not expressed any opinion on the merits of the case.

12. Accordingly, the writ petition is disposed of, along with pending applications.

SANJEEV NARULA, J

NOVEMBER 22, 2024

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