

**HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR**

S.B. Arbitration Application No. 50/2023

M/s. Punia Construction Company, Having its office at 30,
Sector-13, Part-2, Hisar- 125001 through its Partner Sh. Banwari
Lal Punia

-----Petitioner

Versus

Union of India, through General Manager, North Western Railway,
North Western Railway, Near Jawahar Circle, Jaipur

-----Respondent

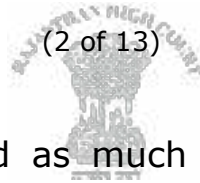
For Petitioner(s) : Mr. Jatin Agrawal
For Respondent(s) : Ms. Manjeet Kaur

HON'BLE MR. JUSTICE SUDESH BANSAL

Order

05/07/2024

1. Petitioner has filed this application under Section 11(5) read with 11 (6) of the Arbitration and Conciliation Act, 1996 (hereafter 'the Act of 1996'), for appointment of Arbitrator to settle the claim referred by the petitioner in Para 19 (a to d) of the Arbitration Application.
2. The petitioner has invoked Clause 63 and 64 of the Indian Railway Standard General Conditions of Contract (for short "GCC"), for appointment of Arbitration Tribunal in view of Clause 32 contained in the Standard Tender Document through which the petitioner was assigned contract for construction work.
3. Heard learned counsel for both parties and perused the record.
4. The necessary and relevant facts, required to be noticed for the purpose of deciding this arbitration application and which



culled out from the record as much as are undisputed, are as under:-

4.1 Respondent through Dy. Junior Engineer (Construction), Bikaner floated Tender No. NWR-SC-BKN-02-2018-19 dated 11.05.2018 for the construction work, against which the tender bid of petitioner was accepted vide Letter of Acceptance dated 18.09.2018. The construction work was completed by the petitioner by 31.10.2021, within the extended period of time schedule. The petitioner is a partnership firm formed under the deed of partnership dated 01.04.2014 (Ann.1).

4.2 After completion of work, petitioner put claim for making payments of certain items, allegedly were executed but not paid vide letter dated 27.12.2021 (Ann.15), then vide letter dated 07.12.2022 (Ann.16) and also put a claim for losses and damages, allegedly sustained by the petitioner during execution of work through letter dated 15.07.2022.

4.3 Thereafter, with consent of petitioner, full and final bills were prepared and under the clear agreement that the petitioner have no other claim outstanding against the North Western Railway for the work done, as also with execution of "No Claim Certificate", petitioner received payments from the Railway. Such final bill and "No Claim Certificate" have not been placed on record by the petitioner but have been placed on record by the respondent as Annexure R/10 and R/11.

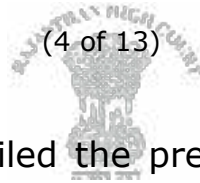
4.4 It is further undisputed fact that thereafter, one another final supplementary agreement dated 03.09.2022 was separately executed between the petitioner and respondent, wherein there is



clear stipulation that the petitioner-firm, being the second part of this agreement, has accepted the sum mentioned in the agreement in full and final satisfaction of its dues and claims under the said principal agreement. It has been agreed and understood between the parties that arbitration clause contained in the principal shall stand ceased to have any effect and/ or shall be deemed to be non-existent for all purposes. It is worthy to note here that although the petitioner has referred about execution of this Final Supplementary Agreement dated 03.09.2022 in the arbitration application para No.18, but did not produce copy of this supplementary agreement on record. Nevertheless, this final supplementary agreement dated 03.09.2022 has been placed on record by the respondent as Annexure R/12.

4.5 Thereafter, the petitioner served one notice dated 14.11.2022 (Ann.18) upon the respondent, raising claims, (i) for loss of profit and overhead expenses, (ii) for special work, master ring and special shuttering, (iii) for low testing and glaring differences, (iv) for payment of nuts and bolts and (v) deductions made by the department towards launching of girder during the blocks and invoked the clause 64 of GCC for appointment of Arbitrator by the respondent to settle such dispute.

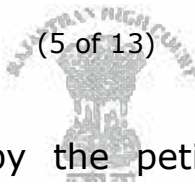
4.6 The respondent vide letter dated 17.01.2023 (Ann.19), given in response to the demand for appointment of Arbitrator under notice dated 14.11.2022, intimate the petitioner that the case is not arbitral, hence prayer for appointment of arbitrator was declined.



4.7 Thus, the petitioner filed the present Arbitration Application before the High Court on 16.03.2023, but without impugning the letter of respondent dated 17.01.2023, declining to appoint the Arbitrator with assigning reasons thereof.

5. Counsel for the petitioner contends that the final bill and “No Claim Certificate” as well as Final Supplementary Agreement are not binding on the petitioner, because same were executed by the petitioner under pressure, duress and undue influence of respondent. In support of his submission, reliance has been placed on the Judgment of Hon’ble Supreme Court in case of **Union of India Vs. Parmar Construction Company [2019 (15) SCC 682]**, to contend that arbitration agreement can be invoked despite execution of No Claim Certificate/ Discharge Agreement.

6. Per contra, counsel appearing on behalf of respondent-Railway, while opposing the Arbitration Application submitted that all the dues and claims of petitioner were included in the final bill and after making payment of final bill, security deposits and PVC etc., on 26.07.2022, one additional final supplementary agreement dated 03.09.2022 was also executed by the petitioner acknowledging to enter into full and final settlement having cleared its all dues and claims. It has also been pointed out that the claims made by the petitioner in the demand notice falls in the category of “Excepted Matters” because the value of claim exceeds 20% of the original value of contract agreement as much as the petitioner has voluntarily executed “No Claim Certificate”, therefore, in such eventuality, clauses 63 and 64 of GCC are not



available to be invoked by the petitioner for appointment of arbitrator.

7. Heard. Considered.

8. At the outset, it is worthy to note that the petitioner has not disputed to receive the final payment under the final bill and his signature on final bill and "No Claim Certificate" dated 26.07.2022 as much as the petitioner does not dispute execution of "Final Supplementary Agreement" between parties executed on 03.09.2022. It is noteworthy that the petitioner has not placed these documents on record, rather tried to dispute these documents on the pretext that such documents were in form of pre-printed format and the petitioner was required to sign these documents between the dotted lines which he made under pressure, duress and undue influence. Since such documents have been placed on record from the side of respondent as Annexure R/10, R/11 and R/12, a bare perusal of documents does not inspire confidence of this Court about the genuineness of the case of petitioner taking a pretext to sign these documents under duress and undue influence as much as the final bill and No Claim Certificate Exhibit R/10 and R/11 were executed on 26.07.2022 and the final supplementary agreement (R/12) was executed on 03.09.2022 i.e. on two different dates. Moreover, perusal of final supplementary agreement shows that same is not in pre-printed format, rather same has been executed as an independent and separate agreement, duly signed by both parties that too in presence of one witness Mohan Lal whose signature also found

place on this agreement. This Court finds it appropriate to reproduce this Final Supplementary Agreement hereunder:-

**North Western Railway
Final Supplementary Agreement**

"Articles of agreement made this day 03.09.2022 in the year 2022 between the President of India, acting through Railway Administration having his office at Jaipur herein after called the Railway of the one part and M/S Punia Construction Co., 30, Sector-13, Part-2, Hisar-125001 (Haryana) of the second part.

Whereas the party hereto of the second part executed and agreement with the party hereto of the first part being agreement Number-49-NWR/DY CE/C/BKN/2018-19 dated 01.02.2019 for the performance of "Construction of 03 lane Road Over Bridge in Railway portion (Four span of 36m over railway tracks) with RCC deck slab on composite girder super structure with RCC substructure & Pile foundation alongwith Limited height subway (1 x 4.50m x 2.50m for 3 track) in lieu of level on Barwala-Aroha-Adampur-Bhardra Road (SH-10) Hisar District on Hisar-Bathinda section" herein after called the 'Principal Agreement'.

And whereas it was agreed by and between the parties hereto that the works would be completed by the party hereto of the second part on 31.10.2021 date last extended and whereas the party hereto of the second part has executed the work to the entire satisfaction of the party hereto of the first.

And whereas the party hereto of the first part already made payment to the party hereto of the second part diverse sums from time to time aggregating to Rs.17,49,81,218.93 (Seventeen Crore Forty Nine Lakhs Eighty One Thousand Two Hundred Eighteen and paise Ninety Three only) with PVC amount of Rs.1,01,38,133.72 (One Crore One Lakhs Thirty Eight Thousand One Hundred Thirty Three and paise Seventy Two only) including the final bill bearing voucher No.12/ Dy CE/C/BKN/ROB dated 26.07.2022 of value Rs.87,04,067.00 (Rs Eighty Seven Lakhs Four Thousand Sixty Seven only) the receipt of which is hereby acknowledged by the party hereto of the second part in full and final settlement of all his /its claims under the principal agreement.



And whereas the party hereto of the second part have received further sum of Rs.41,66,655.00 (Rs Forty One Lakhs Sixty Six Thousand Six Hundred Fifty Five through the final PVC bill bearing voucher NoM/ Dy CE/C/BKN/ROB dated 03.09.2022 (the receipt of which is hereby acknowledged by the party thereto of the second part) from the party hereto of the first part in full and final settlement of all his/its disputed claims under principal agreement. Now, it is hereby agreed by and between the parties in the consideration of sums already paid by the party hereto of the first part to the party hereto of the second part against all outstanding dues and for all works done under the aforesaid principal agreement including/ excluding the security deposit, the party hereto of the second part have no further dues of claims against the party hereto of the first part under the said Principal Agreement. It is further agreed by and between the parties that the party hereto of the second part has accepted the said sums mentioned above in full and final satisfaction of all its dues and claims under the said Principal Agreement. It is further agreed and understood by and between the parties that the arbitration clause contained in the said principal agreement shall cease to have any effect and/or shall be deemed to be non-existent for all purposes.

Contractor/s-----
Address: M/S Punia Constr. Co.,
30, Sector-13, Part-2,
Hisar-125001(Haryana)

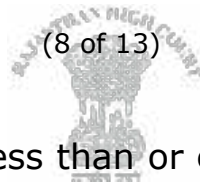
Dy. Chief Engineer/Cost
North Western Railway, Bikaner
for and on behalf of the President
of India
dated 03/09.2022

Signature of witness with address:

MOHAN LAL S/o BHOOP Singh, VPO Balsanar, District Hisar

9. It is noteworthy that the petitioner has not produced affidavit of witness Mohan Lal who made his signature on this supplementary agreement to fortify and support his case.

10. Further on considering the clause 32 of the Standard Tender Document, it appears that the provision of clauses 63 and 64 of GCC will be applicable only for settlement of claims dispute



between parties for value less than or equal to 20% of the original value of the contract agreement as much as for disputing the condition of Tender Document, suit remedy is available to the aggrieved party. The relevant clause 32 (i) and (iv) are being extracted hereunder:-

"32. Demand for Arbitration (Clause no. 64 of GCC 2014 with upto date Correction slip): Subject to the provisions of the aforesaid Arbitration and Conciliation (Amendment) Act 2015 and the rules there under and any statutory modifications thereof shall apply to the arbitration proceedings under this clause.
(i) The provision of Clauses 63 and 64 of the General Conditions of contract will be applicable only for settlement of claims of disputes between the parties for values less than or equal to 20% of the original value of the contract agreement and when the claims and disputes are of value more than 20% of the original value of the contract agreement, provisions of Clauses 63 & 64 and other Clauses of the General Conditions of Contract will not be applicable and arbitration shall not be a remedy for settlement of such disputes.
(ii)xxx
(iii)xxx
(iv) If there is any dispute arisen between the parties with respect to this agreement, then any application or suit shall be initiated only in the court with the local limits, falling under the jurisdiction of the North-Western Railway and both the parties shall be bound by this clause."

10. It is also apposite to refer clause 63 of GCC, which stipulates the matters which would fall in the category of "Excepted Matters" (Matters not Arbitrable) and where No Claim Certificate has been signed by the Contractor, same is included in the category of "Excepted Matters", clause 63 reads as under:-

"63. Matters Finally Determined By The Railway:
All disputes and differences of any kind whatsoever arising out of or in connection with the contract, whether during the progress of the work or after its completion and whether before or after the determination of the contract, shall be referred by the contractor to the GM and the GM shall, within 120

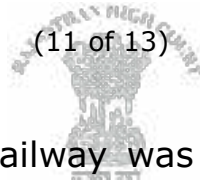
days after receipt of the contractor's representation, make and notify decisions on all matters referred to by the contractor in writing provided that matters for which provision has been made in Clauses 8, 18, 22(5), 39, 43(2), 45(a), 55, 55-A(5), 57, 57A, 61(1), 61(2) and 62(1) to (xiii) (B) of Standard General Conditions of Contract or in any Clause of the Special Conditions of the Contract shall be deemed as 'excepted matters' (matters not arbitrable) and decisions of the Railway authority, thereon shall be final and binding on the contractor; provided further that 'excepted matters' shall stand specifically excluded from the purview of the Arbitration Clause."

11. In the opinion of this Court, having considered the nature of disputed claim and conduct as well as undisputed fact in entirety, in view of aforesaid referred clauses, incorporated in the Standard Tender Document and GCC, the decision of the respondent Railway to observe that "The case is not Arbitral" and to deny appointment of Arbitrator under its letter dated 17.01.2023 may not be held to be arbitrary or against the agreed terms and conditions between parties. The petitioner has also not impugned this letter. Nevertheless, the petitioner has tried to make out a case for the purpose of moving this arbitration application, to limit its claim within 20% of the original value of the contract in order to bring his case within clause 32 (i) of Standard Tender Document, as also averred to sign the no claim certificate and final supplementary agreement under duress, undue influence but this Court is not satisfied with such contentions of the petitioner, since both contentions are apparently afterthought and do not seem to be raised bonafidely and fairly as much as do not inspire confidence of this Court.



12. Final bill and no claim certificate were signed by the petitioner on 26.07.2022 and thereafter, final supplementary agreement was executed under signature and seal of petitioner on 03.09.2022 and which is not in pre-printed format. This supplementary agreement has been extracted hereinabove. Moreover, the petitioner has not assigned any reason for not producing these documents on record, which have been placed on record by the respondent, so petitioner has not come with disclosure of contents and nature, format of documents, has assigned any reason for not producing there documents, to show his bona fide and fairness before court of law.

13. The resort sought to be taken by learned counsel for the petitioner to the Judgment of Hon'ble Supreme Court delivered in case of **Parmar Construction Company** (*Supra*), is not fruitful for the petitioner in facts and circumstances of the present case, discussed hereinabove. In this Judgment, the Hon'ble Supreme Court while relying upon the previous Judgment delivered in case of **National Insurance Company Limited Vs. Boghara Polyfab Private Limited [(2009) 1 SCC 267]** and other judgments, held and observed in para 34 that there can not be a rule of absolute kind to hold that after signing no claim/ discharge certificate, arbitration agreement stands discharged or ceased to operate but each case has to be looked into on its own facts and circumstances. That was a case of claiming due payments by the Contractor for the escalation cost incurred by him and the railway establishment, without any justification reduced the claim unilaterally, in that factual backdrop, the defence of no claim



certificate, taken by the Railway was not honoured by the High Court and affirmed by the Hon'ble Supreme Court. In the present case, the case of petitioner is not for claiming the dispute of escalation cost. The ratio decidendi, which has been followed and reiterated by the Hon'ble Supreme Court, as expounded in case of **Boghara Polyfab Private Limited** (*supra*) was referred in para 33 and from that judgment, the portion of judgment including para 52 (ii) and (v) is being highlighted hereunder:-

"33. It further laid down the illustrations as to when claims are arbitrable and when they are not. This may be illustrative (not exhaustive) but beneficial for the authorities in taking a decision as to whether in a given situation where no claim/discharge voucher has been furnished what will be its legal effect and still there is any arbitral dispute subsists to be examined by the arbitrator in the given facts and circumstances and held in para 52 of National Insurance Company Limited Vs. Boghara Polyfab Private Limited [(2009) 1 SCC 267] as follows:-

52. Some illustrations (not exhaustive) as to when claims are arbitrable and when they are not, when discharge of contract by accord and satisfaction are disputed, to round up the discussion on this subject are :

(I) xxx

(ii) A claimant makes several claims. The admitted or undisputed claims are paid. Thereafter negotiations are held for settlement of the disputed claims resulting in an agreement in writing settling all the pending claims and disputes. On such settlement, the amount agreed is paid and the contractor also issues a discharge voucher/no claim certificate/full and final receipt. After the contract is discharged by such accord and satisfaction, neither the contract nor any dispute survives for

consideration. There cannot be any reference of any dispute to arbitration thereafter.

(iii) xxx

(iv) xxx

(v) A claimant makes a claim for a huge sum, by way of damages. The respondent disputes the claim. The claimant who is keen to have a settlement and avoid litigation, voluntarily reduces the claim and requests for settlement. The respondent agrees and settles the claim and obtains a full and final discharge voucher. Here even if the claimant might have agreed for settlement due to financial compulsions and commercial pressure or economic duress, the decision was his free choice. There was no threat, coercion or compulsion by the respondent. Therefore, the accord and satisfaction is binding and valid and there cannot be any subsequent claim or reference to arbitration."

14. For aforesaid reasons, this Court reaches to the conclusion that the petitioner tried to make an afterthought and false attempt that his signature on the final bills and no claim certificate as much as on the supplementary final agreement were made under pressure, duress and undue influence, taking resort of of the Judgment of Hon'ble Supreme Court in **Parmar Construction Company** (*Supra*), but petitioner did not produce these documents, to conceal from the court, about the true contents and nature, format of documents, which is not bona fide conduct of petitioner. This Court finds that despite receiving full and final payment from the respondent company, against its all dues and claims, filing of the present application for appointment of Arbitrator is not liable to be appreciated and such practice is deprecated and needs to be prevented to avoid misuse of process of law.



15. Therefore, considering the conduct and lack of bonafides on the part of petitioner, the present application is liable to be dismissed with exemplary cost of Rs.25,000/- and the same is hereby dismissed. The cost of Rs.25,000/- be deposited with the Registrar General LWFA, Rajasthan High Court within a period of four weeks through cheque/ DD. Receipt of deposition of cost be placed in the file.

(SUDESH BANSAL),J

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