

HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR

S.B. Arbitration Application No. 82/2022

S.p. Goyal And Company, Through Partner-Pankaj Goyal S/o Shri Prakash Chand Goyal, Age 48 Years, Office At E 397 Kamla Nagar Agra 282005.

-----Petitioner

Versus

1. North Western Railway, Through Divisional Railway Manager, Dm Office, P.h. Road, Ram Mandir Road, Sen Colony, Gopalbari, Jaipur, Rajasthan 302016.
2. General Manager, North West Railway, General Manager Office Near Jawahar Circle, Malviya Nagar, Jaipur, Rajasthan, Pin-302017.

-----Respondents

For Petitioner(s)	:	Mr.Gaurav Sharma Saraswat
For Respondent(s)	:	Mr.Ashish Kumar

HON'BLE MR. JUSTICE ASHOK KUMAR GAUR
Order

05/05/2023

The instant arbitration application has been filed by the applicant under Section 11(5) of the **Arbitration and Conciliation Act, 1996 (for short "the Act of 1996")** for appointment of an Arbitrator.

Learned counsel for the applicant submits that the respondents had floated a tender dated 24th January, 2020 for development of satellite track machine depot at Bandikui. The offer of the applicant was accepted, being the highest bidder and letter of acceptance was issued on 20th March, 2020 for a contract of work amounting to Rs.1,49,32,698/-.

Learned counsel for the applicant submits that the time provided in the terms and conditions of the contract was for conclusion of the entire project by 20th September, 2020, however,

due to COVID-19 pandemic and resultant lock-down, the work started late and it had to be stopped at some point of time as well.

Learned counsel submits that since the agreement between the applicant and the respondents was duly entered and signed and as such, the respondents were also under contractual obligation to perform their part of contract and as such, the plans and designs, submitted by the applicant from time to time, were not taken up and as such, there was a delay of work.

Learned counsel submits that the applicant made request to the respondents to resolve the dispute and when all the efforts failed in spite of informing respondents by writing several letters then the applicant had to serve the statutory notice of the period of 30 days by invoking arbitration clause and as such, request was made to refer the matter to an Arbitrator.

Learned counsel submitted that after receipt of statutory notice, when no response was received, the applicant had no choice except to approach this Court.

Learned counsel – Mr.Ashisk Kumar, appearing for the respondents submits that reply to the application has been filed.

Learned counsel for the respondents submits that the applicant is not entitled to claim any appointment of Arbitrator, as the work, which was to be executed by the applicant within the stipulated time, was not executed and as such, the contract was also terminated on 09th November, 2021 and the period of 90 days was prescribed to file the claim, as per the condition No.64(1)(iv) of the agreement, the applicant did not raise any claim and the claim was raised belatedly on 28th March, 2022, i.e., more than 138 days from the date of termination of contract.

Learned counsel for the respondents further submits that the applicant did not adhere to the process prescribed in the contract as per Clause 64(1)(iii)(b) of the agreement and dispute was raised beyond the prescribed time limit as per the general condition of the contract and regular procedure was not followed, thus the applicant is not entitled for the appointment of Arbitrator.

Learned counsel further submits that the respondents had duly replied to the various communication, received from the applicant and as such, it is the applicant, who is to be blamed for not seeking the appropriate remedy within the time prescribed.

Learned counsel for the respondents further submits that work of the applicant was never found satisfactory and the applicant did not abide by terms and conditions of the agreement and as such, a communication was also sent as per Clause 62 of the general conditions of the contract to terminate the contract and to complete the balance work.

I have considered the submissions made by learned counsel for the parties and perused the record of the case.

This Court finds that as per the general conditions of the contract, i.e., Part – I Regulation for Tenders and Contracts and Part – II Standard General Conditions of Contract and as per Clause 64 of the agreement, there was a provision for appointment of an Arbitrator in respect of the disputes/differences, if arise, between the parties.

This Court further finds that only on account of not filing claim within the stipulated time of 120 days, as provided in Clause 64(1) (i) of the agreement, demand of the applicant cannot be refused by the respondents to appoint an Arbitrator.

This Court finds that if the parties had agreed by entering into the agreement and as such, on arising dispute in terms of the agreement, necessary remedial recourse was required to be provided by referring matter to the Arbitrator.

The submission of learned counsel for the respondents that since the contract itself has been terminated and further, the applicant has violated the terms and conditions and did not complete the project within the stipulated time, suffice it to say by this Court that on these pleas, appointment of the Arbitrator cannot be denied.

This Court, accordingly, allows the present arbitration application filed by the applicant and while exercising the power conferred under Section 11 (5) read with Section 11(6) of the Act of 1996, appoints Hon'ble Mr. Justice G.R. Moolchandani (Retired Judge), Plot No.23, Taru Chhaya Nagar, Tonk Road, Jaipur, as a sole Arbitrator to adjudicate the dispute between the parties. The payment of cost of arbitration proceedings and arbitration fee shall be made as per the 4th Schedule appended to the Act of 1996.

The intimation of appointment, as aforesaid, may be given by the counsel for the parties as well as by the Registry to Mr. Justice G.R. Moolchandani (Retired Judge), Plot No.23, Taru Chhaya Nagar, Tonk Road, Jaipur.

(ASHOK KUMAR GAUR),J