



\$-5

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

+ **ARB.P. 113/2025**

Date of Decision: **17.02.2025**

IN THE MATTER OF:

AAR PEE REFRIGERATION AND AIRCONDITIONING
THROUGH ITS PROPRIETOR SH. ANJUMAN AGNIHTRI

..... PETITIONER

Through: Mr.Rahul Rai, Mr.Vishal Bhardwaj,
Mr.Tushar Rawal and Mr.Shekhar
Mehla, Advocates.

Versus

AIRPORTS AUTHORITY OF INDIA THROUGH THE REGIONAL
EXECUTIVE DIRECTOR

.... RESPONDENT

Through: Ms.Sonal K Singh and Mr.Ratik
Sharma, Advocates.

HON'BLE MR. JUSTICE PURUSHAINDRA KUMAR KAURAV

JUDGEMENT

PURUSHAINDRA KUMAR KAURAV, J. (ORAL)

1. The present petition has been filed under Section 11(6) of the Arbitration and Conciliation Act, 1996 (**A&C Act**), seeking the appointment of an Arbitrator to adjudicate upon the disputes that have arisen between the parties. The facts of the case would indicate that the petitioner is a



proprietorship concern engaged in the business of providing Air-Conditioning Maintenance and allied services.

2. Learned counsel for the petitioner submits that the respondent had invited e-tenders for the works pertaining to “*Annual Comprehensive Maintenance and Operation of A/C Plants at Various Locations*” in the operational area at IGI Airport, Delhi, for a period of two years (2018-2020).

3. Pursuant thereto, upon compliance with requisite formalities, including the deposit of a bank guarantee, the respondent awarded the contract in favour of the petitioner *vide* award letter dated 20.11.2018. However, certain disputes subsequently arose between the parties, compelling the petitioner to first invoke the Dispute Redressal Committee (DRC) and thereafter initiate arbitration proceedings against the respondent in terms of Clause 25 of the General Conditions of Contract (GCC).

4. Learned counsel for the petitioner submits that despite the commencement of arbitration and the ongoing proceedings, the respondent continued to seek the services of the petitioner-entity for the completion of contractual works. In compliance with its obligations, it is submitted that the petitioner diligently proceeded with the execution of the works as per the contract.

5. It is further submitted that upon completion of the obligations under the agreement, the petitioner duly intimated the respondent and requested for the release of outstanding payments, formal recording of completion, and issuance of the completion certificate. According to the petitioner, after multiple follow-ups, the respondent issued a Completion Certificate only on 21.06.2023. However, the certificate reflected wrongful deductions under the head “*Reimbursement of EPF, ESI, Wage Difference, Bonus, and*



exclusive GST”, and this, according to the petitioner, caused certain financial prejudice. Aggrieved by these adjustments, the petitioner issued a Demand Notice for Arbitration on 21.06.2023 under Clause 25 of the GCC, raising claims under various heads. Learned counsel submits that the disputed claims amount to Rs.40,59,496/-.

6. Subsequently, on 16.10.2023, the petitioner addressed a letter to the respondent through its Senior Manager (Engg.-E), requesting the appointment of a DRC/Arbitrator concerning the final bill for the executed works.

7. Further, it is submitted that in accordance with Clause 25 of the Agreement, the petitioner once again issued a notice in Form XVII on 10.05.2024, reiterating its claims and requesting the appointment of an arbitrator. Thereafter, on 09.10.2024, the petitioner, through its legal counsel, sent another notice to the respondent seeking the appointment of a DRC/Arbitrator.

8. In light of the foregoing, the learned counsel for the petitioner submits that it is necessary that an Arbitrator be appointed under Clause 25 of the GCC to adjudicate the disputes between the petitioner and the respondent.

9. The respondent, by way of reply dated 14.02.2025, opposes the instant petition primarily on the ground that a part of the claim raised herein could have been the subject matter of a prior dispute, which has already attained finality.

10. Learned counsel for the respondent contends that before the commencement of the present round of arbitral proceedings, the disputes between the parties had already been adjudicated by the DRC of the respondent, which, after considering the merits of the claims, ruled in favour



of the respondent. Further, she submits that the first Arbitral Tribunal rendered an award in favour of the respondent herein, directing the petitioner herein to pay an amount of Rs.9,38,400/- (Rupees Nine Lakh Thirty-Eight Thousand Four Hundred Only).

11. Pursuant thereto, the respondent, by letter dated 16.09.2021, requested the petitioner to deposit the awarded amount through demand draft. However, the petitioner did not comply with the same. Instead, the petitioner preferred an application under Section 34 of the Arbitration and Conciliation Act, 1996, bearing OMP (Comm) No. 99/2021 titled *AAR PEE Refrigeration & Air-Conditioning v. Airports Authority of India*, before the Patiala House Courts, New Delhi, challenging the first Arbitral Award. The Patiala House Court, by judgment dated 26.11.2021, dismissed the Section 34 application and upheld the findings of the Arbitral Tribunal. The petitioner did not prefer any appeal against the said judgment, thereby allowing the awarded amount under the first Arbitral Award to attain finality.

12. The respondent further submits that, as per the Agreement, the work allotted to the petitioner was to be completed by 14.12.2020, but the actual completion occurred on 11.02.2021. Additionally, under the terms of the Agreement, the petitioner was required to rectify all defects until 11.08.2021, which marked the expiry of the *Defect Liability Period*. Subsequently, on 21.06.2023, the respondent issued a Completion Certificate, wherein it sought certain recoveries from the final bill of the petitioner solely under the ambit of the agreement between the parties.

13. Learned counsel further submits that the petitioner, *vide* letter dated 21.06.2023, sought reference of certain disputes to the DRC. However, the



respondent submits that the petitioner failed to specify the nature of the disputes, especially when the issues between the parties had already been adjudicated in the first arbitral proceedings. The respondent also points out that certain letters/communications between the parties have not been annexed by the petitioner along with the present petition.

14. Learned counsel then contends that, at this stage, a petition under Section 11 of the A&C Act is not maintainable, therefore, the same deserves to be dismissed.

15. I have considered the submissions made by learned counsel appearing on behalf of the parties and perused the record.

16. The Supreme Court, in various decisions, has held that at the stage of Section 11, the Court only needs to look into as to whether there subsists any dispute arising from an arbitration clause. The veracity of the claim on merit, as to whether the same is acceptable or otherwise, need not be examined in depth.

17. The relevant paragraphs of the decision in the case of ***Interplay Between Arbitration Agreements under Arbitration, 1996 & Stamp Act, 1899, In re***¹, reads as under:-

"120. In view of the above discussion, we formulate our conclusions on this aspect. First, the separability presumption contained in Section 16 is applicable not only for the purpose of determining the jurisdiction of the Arbitral Tribunal. It encapsulates the general rule on the substantive independence of an arbitration agreement. Second, parties to an arbitration agreement mutually intend to confer jurisdiction on the Arbitral Tribunal to determine questions as to jurisdiction as well as substantive contractual disputes between them. The separability presumption gives effect to this by ensuring the validity of an arbitration agreement contained in an underlying contract, notwithstanding the invalidity, illegality, or termination of such contract. Third, when the

¹ (2024) 6 SCC 1



parties append their signatures to a contract containing an arbitration agreement, they are regarded in effect as independently appending their signatures to the arbitration agreement. The reason is that the parties intend to treat an arbitration agreement contained in an underlying contract as distinct from the other terms of the contract; and Fourth, the validity of an arbitration agreement, in the face of the invalidity of the underlying contract, allows the Arbitral Tribunal to assume jurisdiction and decide on its own jurisdiction by determining the existence and validity of the arbitration agreement. In the process, the separability presumption gives effect to the doctrine of competence-competence.

(iii) Negative competence-competence

139. The international arbitration law as well as domestic law prioritize the Arbitral Tribunal by permitting them to initially decide challenges to their authority instead of the Courts. The policy consideration behind this approach is two-fold : first, to recognize the mutual intention of the parties of choosing the arbitrator to resolve all their disputes about the substantive rights and obligations arising out of contract; and second, to prevent parties from initiating parallel proceedings before courts and delaying the arbitral process. This is the positive aspect of the doctrine of competence-competence.

140. The negative aspect, in contrast, speaks to the national courts. It instructs the Courts to limit their interference at the referral stage by deferring to the jurisdiction of the Arbitral Tribunal in issues pertaining to the existence and validity of an arbitration agreement. Thus, the negative aspect of the doctrine of competence-competence suggests that the Courts should refrain from entertaining challenge to the jurisdiction of the Arbitral Tribunal before the arbitrators themselves have had an opportunity to do so. [George A. Bermann, "The "Gateway" Problem in International Commercial Arbitration", (2012) 37 Yale Journal of International Law 1, 16.] Allowing Arbitral Tribunals to first rule on their own jurisdiction and later allowing the Courts to determine if the tribunal exercised its powers properly safeguards both the power and authority of the Arbitral Tribunal as well as the Courts. The negative aspect of the doctrine has been expressly recognised by Indian courts. Considering both the positive and negative facets, the principle can be defined as a rule whereby arbitrators must have the first opportunity to hear challenges relating to their jurisdiction, which is subject to subsequent review by courts. [Fouchard, Gaillard, Goldman on International Commercial Arbitration, Emmanuel Gaillard and John Savage (Eds.), (1999) 401.]"

18. Admittedly, the dispute raised in the instant petition is after completion of work, whereas, the earlier dispute which has been decided,



was during the subsistence of the contract. It is thus seen that if after completion of work, if the petitioner has any further claim to be raised against the respondent, the same cannot be rejected at the very nascent stage and the same can be the subject matter of adjudication of the Arbitrator.

19. In view of the aforesaid, since the existence of the arbitration clause is evident from a perusal of the Agreement, there is no impediment in appointing an independent Sole Arbitrator for adjudicating the disputes between the parties as prayed for, as mandated in terms of the judgments of the Supreme Court in *Perkins Eastman Architects DPC v. HSCC (India) Ltd.*,² *TRF Limited v. Energo Engineering Projects Ltd.*,³ *Bharat Broadband Network Limited v. United Telecoms Limited.*,⁴ and *Interplay between Arbitration Agreements under the Arbitration & Conciliation Act, 1996 & the Indian Stamp Act, 1899*⁵.

20. The Court, therefore, leaving all rights and contentions of the parties open, appoints *Mr. Akshat Bajpai, Advocate (Mobile No7985177435; e-mail ID: bajpaiakshat@gmail.com)* as the sole Arbitrator.

21. The arbitration would take place under the aegis of the Delhi International Arbitration Centre (DIAC), and would abide by its rules and regulations. The learned Arbitrator shall be entitled to fees as per the Schedule of Fees maintained by the DIAC.

22. The learned arbitrator is also requested to file the requisite disclosure under Section 12 (2) of the Act within a week of entering on reference.

23. The registry is directed to send a receipt of this order to the learned

² (2020) 20 SCC 760

³ (2017) 8 SCC 377

⁴ 2019 SCC OnLine SC 547

⁵ In re, 2023 SCC OnLine SC 1666.



arbitrator through all permissible modes, including e-mail.

24. 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.

25. The petition stands disposed of in the aforesaid terms.

FEBRUARY 17, 2025

Nc/sp

PURUSHAINDRA KUMAR KAURAV, J

Click here to check corrigendum, if any