

(2002) 09 DEL CK 0014
In the Delhi High Court
Case No : A.A. No. 25 of 2002

Amarnath Charanji Lal and Company	APPELLANT
Vs	
DCM Daewoo Motors Limited	RESPONDENT

Date of Decision : 18-09-2002

Acts Referred:

Arbitration and Conciliation Act, 1996 — Section 11, 11(4), 11(6)

Citation : (2003) 102 DLT 637 : (2003) 42 SCL 167

Hon'ble Judges : Ramesh Chandra Chopra, J

Bench : Single Bench

Advocate : M. Dutta, for the Appellant; M.L. Shoukat, for the Respondent

Judgement

R.C. Chopra, J.—This petition u/s 11 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as the "Act" only) was filed by the petitioner on the basis of an arbitration clause contained in the tender document dated 9.11.1995. Clause 104 of the said tender document contained an arbitration clause according to which in case of any dispute or difference between the parties touching or concerning the work or the executing or maintenance thereof under the contract or the rights touching or concerning the work or the execution thereof. or to the rights or liabilities disputes or differences between the parties arising out of the contract in question, the decision of the Engineer in charge shall be final and binding. According to the petitioner the respondent did not make payment under the contract and as such the petitioner issued a notice dated 2.11.2001 invoking the arbitration clause but vide is reply dated 21.11.2001 the respondent refused to appoint arbitrator and raised illogical and absurd grounds to reset the claim of the petitioner. Hence the petition for appointment of Arbitrator.

2. The respondent filed a reply to the petition raising preliminary objections that this Court has no pecuniary jurisdiction as the value of the subject matter is less than 20 lakhs; that there is no arbitration agreement between the parties; that the petitioner is not a legal entity; that there is no cause of action against the

respondent. It is stated that the tender was granted to a partnership firm M/s Amarnath Charanji Lal & Co. which was an unregistered firm and as such the petitioner has no right to sue the respondent. The agreement as well as arbitration clause are denied and it is stated that the tender was issued to a partnership firm and not to the petitioner. The dues as claimed by the petitioner are also controverted.

3. I have heard learned counsel for the petitioner and learned counsel for the respondent. I have gone through the records of the case.

4. In view of the judgment of the Apex Court in *Konkan Railway Corporation Ltd. and Another Vs. Rani Construction Pvt. Ltd.*, of the Act does not require even issuance of a notice to the opposite party before the appointment of an arbitrator. It does not contemplate a response from the opposite party nor does it contemplate any decision by the Chief Justice or his designate on any controversy that the other party may raise even in regard to its failure to appoint an arbitrator within the period of 30 days. All that the Chief Justice or his designate has to see is the documents and the correspondence between the parties annexed to the petition and take into account the qualifications required of the arbitrator by the agreement between the parties and other considerations likely to secure the nomination of an independent and impartial arbitrator. No adjudicatory decision is contemplated. In view of Section 16 of the Act, the arbitral Tribunal itself has to rule on its own jurisdiction which includes the objections in regard to the existence or validity of the arbitration agreement between the parties. Therefore, the objections being raised by the respondent in the present case would be looked into by the arbitrator only and not by this Court while disposing of the petition u/s 11 of the Act. The objection in regard to pecuniary jurisdiction of the Court is untenable.

5. In view of the existence of an arbitration agreement between the parties and the non-appointment of an Arbitrator by the respondent after notice u/s 11(4)(a) of the Act, this Court is of the considered view that the petitioner has made out a case for appointment of an Arbitrator u/s 11(6) of the Act. In the result the petition is allowed and Shri Niranjana Singh, Supdt. Engineer, Delhi Central Circle-I, CPWD, I.P. Bhawan, New Delhi-110002 is appointed an Arbitrator to enter upon the reference and adjudicate the disputes between the parties arising out of the tender document dated 9.11.1995. The fee shall be fixed by the Arbitrator himself keeping in view the number of sittings required but it shall not exceed a sum of Rs. 35,000/- in all.

6. The parties are directed to appear before the Arbitrator for further directions on 30.9.2002 at 2.00 PM.