
(2018) 11 DEL CK 0214

In the Delhi High Court

Case No : Arbitration Petition No. 446 Of 2018

Bharat Rail Automations Pvt. Ltd

APPELLANT

Vs

Union Of India & Anr

RESPONDENT

Date of Decision : 13-11-2018

Acts Referred:

Arbitration and Conciliation Act, 1996 — Section 11

Citation : (2018) 11 DEL CK 0214

Hon'ble Judges : Rajiv Shakdher, J

Bench : Single Bench

Advocate : Madhumita Bhattacharjee, Vidur Kamra, Jagjit Singh, Vipin Chaudhary

Final Decision : Disposed Off

Judgement

Rajiv Shakdher, J

1 This is a petition filed under Section 11 of the Arbitration and Conciliation Act, 1996 (in short "1996 Act"). The petitioner seeks appointment of

an Arbitrator as despite a notice being issued to the respondents, the respondents have not appointed an Arbitrator to adjudicate the disputes arising between the parties.

2 Notice in this petition was issued on 01.06.2018, when, Mr. Jagjit Singh, Sr. Standing Counsel, entered appearance on behalf of the respondents. Mr.

Singh had, on that date, taken an objection with regard to the maintainability of the petition on the ground that it was ex-facie barred by limitation.

2.1 It was Mr. Singh's contention that since the notice invoking arbitration was issued on 13.03.2015, the instant petition filed in 2018 could not be maintained.

2.2 The Court, on that date, had granted time to the respondents to file their reply. The petitioner was also given opportunity to file a rejoinder in the matter. The petition was listed for further hearing on 21.08.2018. On that date, further opportunity was given to the respondent to file a reply, albeit, subject to payment of costs of Rs.5,000/- to the petitioner.

3. Mr. Singh says that he has not been able to obtain appropriate instructions in the matter and, therefore, no reply has been filed. According to Mr.

Singh, since, permission to file the reply was given subject to payment of costs and, as the reply has not been filed, costs need not be paid to the

petitioner. The petitioner, on the other hand, pressed for a disposal of the petition on merits as the matter has lingered on for quite some time.

3.1 I tend to agree with the submission of the learned counsel for the petitioner that the petition needs to be disposed of.

4 Broadly, the assertions made in the petition are as follows:

4.1 It appears that a tender was invited by respondent No.1 for provisioning of Track Circuiting of Station yard at five Stations by using Multi Section

Digital Axle Counter in Basikirthpur- Mandi Dhanaura section of Moradabad Division (hereinafter referred to as ""subject works""). The petitioner was

declared successful in the bidding process. A letter of acceptance was, consequently, issued on 29.06.2011 in favour of the petitioner. As per the

contract entered into between the parties, the tenure for execution of the subject works was pegged at nine (9) months. The value of the contract was

a sum of Rs.2,20,94,319.88.

4.2 Concededly, the contract could not be completed in time. In fact, it is the petitioner's case that extension was granted up to 31.12.2014 by the

respondents, albeit, without levy of penalty. The petitioner claims that the delay in execution of the work was on account of hindrances, which were

solely attributable to the respondents. The petitioner also claims that till about March, 2015, it had completed works worth Rs.2,18,42,259.85.

4.3 Since, the petitioner, purportedly, incurred losses on account of prolongation of works due to alleged hindrances caused by the respondents, it

seeks to recover moneys on that account.

5. The petitioner, in this behalf, had issued a notice on 13.03.2015. Via this notice, not only claims which the petitioner intended to get adjudicated were

put forth before the respondents but also the arbitration agreement was sought

to be triggered. Thereafter, the petitioner appears to have sent several reminders to the respondents on that score. Since, the petitioner did not get a suitable reply despite a reminder letter sent in the behalf as late as on 16.11.2017, it proceeded to approach this Court by way of the instant petition.

6. Strangely, the respondents have chosen not to file a reply. There is, thus, on the Court record, no rebuttal to the assertions made in the petition. The arbitration agreement is contained in Clause 41 of the contract obtaining between the parties. The said clause reads as follows:

41.0 SETTLEMENT OF DISPUTES:

41.1 The provision of Clauses 63 and 64 to the General Conditions of Contract will be applicable only for settlement of claims or disputes between the parties for values less than or equal to 20% of the value of the contract, provision of Clauses 63 and 64 and other relevant clauses of the General Conditions of Contract will not be application and arbitration will not be remedy for settlement of such disputes.

41.2 The Contractor shall not be entitled to ask for arbitration before the completion of the work assigned to him under this contract. The Contractor shall seek reference to arbitration to settle disputes only once within the ambit of condition 41.1 above.

41.3 Special condition vide 41.1 and 41.2 shall prevail over existing clauses 63 and 64 of the General Conditions of Contract, other than provisions relating to "Excepted Matters."

7. Ms. Bhattacharjee, who, appears on behalf of the petitioner, says that if claims, which were referred to in the first notice of the petitioner dated 13.03.2015 are added up, they are approximately in excess of Rs. 3 crores.

8. Mr. Jagjit Singh says that though a reply has not been filed by the respondents, the objection qua limitation taken, though orally, on 1.6.2018 should be kept intact to be advanced before the Arbitrator.

9. I have heard learned counsel for the parties and perused the record.

10. Having regard to the assertions made in the petition and the fact that the existence of the arbitration agreement is not disputed by the respondents,

I am inclined to allow the petition. In this regard, I am fortified by the fact that the cumulative value of the claims sought to be preferred is in excess of

Rs. 3 crores.

11. Accordingly, Honâ??ble Mr. Justice Nisar Ahmad Kakru, Former Chief Justice, Andhra Pradesh High Court (Mobile No. 9419000938) is

appointed as an Arbitrator in the matter. Learned Arbitrator will be paid fees as per the Fourth Schedule appended to the 1996 Act.

12. In view of the fact that the respondents took two dates to file a reply and today, via Mr. Singh conveyed that they did not wish to file a reply, I am

inclined to impose costs in the sum of Rs.7,500/-. The costs will be paid to the petitioner within four weeks from today.

13. The petition is disposed of in the aforesaid terms.

14. Needless to say that since reply has not been filed to the instant petition, the learned Arbitrator will examine the defence of the respondents on

merits.

15. The Registry will dispatch a copy of this order to the learned Arbitrator.