
(2013) 02 DEL CK 0403

In the Delhi High Court

Case No : Arbitration Petition 380 of 2012 and 381 of 2012

Centre for Development Communication

APPELLANT

Vs

Jitf Urban Waste Management (Bathinda) Ltd.

RESPONDENT

Date of Decision : 04-02-2013

Acts Referred:

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

Citation : (2013) 3 AD 89 : (2013) 2 ARBLR 259

Hon'ble Judges : Manmohan Singh, J

Bench : Single Bench

Advocate : Ajay Choudhary, With Mr. Kinshuk Jain, for the Appellant; Sunil Narula, With Mr. Isher Thakur, for the Respondent

Judgement

Manmohan Singh, J.—The Petitioner is a registered Public Trust. Its work inter-alia, includes Municipal solid and Waste Management and subsequent engagement with Waste Workers, Slum Dwellers, Women Unorganized sector on areas of livelihood S.H.Gs and Micro-Credit, Urban health, governance and R.T.I., Social Security and public Participation and Vendors on areas of education, health, micro-finance, self help groups, R.T.I. and Public Participation. By 2001, the petitioner has expanded its activities to various parts of India, through action organization, capacity building, research and advocacy, thereby facilitating positive social change. The petitioner was awarded U.N Habitat Scroll of Honor Award 2004 by United Nations, in recognition to work carried out in the field of Human Settlements Development. "Swatchta Doot -Aple Dari" project was selected as a good practice by the U.N-Habitat and Dubai Municipality in 2006 and 2008. The respondent placed the letter of Intent-collection and transportation of Municipal Solid Waste Management Project-Ferozpur, Punjab for Ferozpur cluster on the broad terms and conditions vide email dated 22nd December, 2011 with the petitioner. The petitioner started the work immediately at the site and invested huge amount of money in setting up the infrastructure with the same. The respondent issued work order No. JUWMFL/C&T/CDC/WO-01 dated 6th February, 2012 for collection and transportation of Municipal Solid

Waste Management Project-Ferozpur, Punjab in pursuance to LOI dated 21st December, 2011 and 22nd December, 2011 for the duration of 60 months on periodic performance review after every 12 months from the date of signing of the contract agreement.

2. The petitioner executed the work as per and under the terms and conditions of the LOI dated 21st December, 2011 and work order dated 6th February, 2012 despite of difficulties and defects like inadequate machinery, non-cooperation of the respondents and their officials. The petitioner also received payment of the bills raised under the said contract from the respondent.

3. As per the case of the petitioner, the respondent failed to remove the difficulties and defects and their supervisors, officials continued to create nuisance and threatened the labourers on the site, misbehaved" with the petitioner's supervisors. An email dated 30th May, 2012 stated that both the parties may have a joint meeting amongst themselves for amicable settlement of these issues. However, the petitioner received a letter dated 18th June, 2012 wherein the respondents had terminated the contract with immediate effect. The petitioner replied to the said letter by issuance of letter dated 16th July, 2012, requesting for withdrawal of termination letters and restoration of contract falling which the petitioner is entitled to damages and payment for work executed, costs incurred etc.

4. It is stated by the petitioner that it has suffered a huge expenditure by the sudden termination of the contract, sum of amounts aggregating to approximately Rs. 1,35,09,703/-(Rs. 1,05,48,044/- on account of damages of various counts and due payments of Rs. 29.61,659/- under ARB-381/12) and Rs. 1,57,77,669/- (Rs. 1,14,27,047/- on account of damages of various counts and due payments of Rs. 43,50,622/- under ARB-380/12) apart from interests and costs, which the petitioner is entitled to recover from the respondent due to their premature, illegal and arbitrary termination of contract.

5. The respondent in the reply to the letter dated 16th July, 2012 has made the allegation against the petitioner that the captioned notices are issued with some ulterior motives which are not tenable. The respondent has also denied the allegations and charges levelled by the petitioner against the respondent. It is mentioned in the reply that the allegations were fabricated and frivolous. It is also mentioned that the petitioner has no right and claim to ask the respondent to restore the work order and/or to invoke the arbitration in respect of the contracts which were never signed between the parties and hence not binding on any of them. It was also mentioned that the petitioner was in-efficient and was not serious and sincere in performing its duty in respect of the work orders. Some instances are also mentioned in para 4 of the letter dated 30th August, 2012. It was also mentioned in the said letter that asking the petitioner to make payment of Rs. 108 lacs failing which the respondent will be forced to initiate legal action against the petitioner. Still if the petitioner will take any action against the respondent, the same will be defended as per the law.

6. The petitioner also invoked the arbitration clause mentioned in the clause 23 of the Conditions of the contract vide letter dated 20th August, 2012 and sought concurrence of appointment of Justice O.P. Garg, retired Judge of Allahabad High Court as the sole arbitrator to adjudicate upon the disputes. The respondent by letter dated 30th August, 2012 denied the right of the petitioner to invoke the arbitration clause as the same was not binding on them.

7. The seat of arbitration has been prescribed as Delhi as per the LOI dated 21st December, 2011 and work order dated 6th February, 2012. The petitioner invokes the provisions of Section 11(6) of the Arbitration and Conciliation Act, 1996 to seek the appointment of Justice O.P. Garg or any other independent and impartial persons as Sole arbitrator on the fee as fixed by the court.

8. No replies to these petitions have been filed by the respondents. The communications exchanged between the parties indicate that the petitioner was trying to make the offer for an amicable settlement. The settlement between the parties could not be arrived. The petitioner also sent a registered AD letter dated 16th July, 2012 calling upon the respondent to withdraw the termination letters for Bhatinda and Ferozepur cluster dated 18th June, 2012. A similar request was made by the petitioner in the letter dated 20th August, 2012 by which the petitioner invoked the arbitration arising out of the Contract entered into between parties with regard to Collection and Transportation of Municipal Solid Waste from Bhatinda and Ferozepur cluster, Punjab.

9. From the letters and e-mails exchanged between the parties, it is not in dispute that the petitioner had offered for amicable settlement. The material placed on record also shows that there is a dispute between the parties. Both the parties are raising their respective claims. The venue of the arbitration is at Delhi as per Clause 23.5 of the Work Order.

10. Clause 23 of the Work Order reads as under:

23. DISPUTES

23.1 Employer's Decision: If any dispute of any kind whatsoever arises between the Employer and the Contractor in connection with, or arising out of, the Contract or the execution of the operations/services or after their completion, and before or after repudiation or other termination of the Contract, including any dispute as to:

- (a) The meaning of the instructions herein before mentioned,
- (b) The quality of the services rendered,
- (c) Any, opinion, instruction, determination, certificate or valuation of the Employer, or
- (d) any other question, claim, right matter or anything whatsoever in any way arising out of or relating to the contract, instructions, conditions, orders or the failure to execute the same. The dispute shall, in the first place, be referred in

writing to the Employer's Authorized personnel who has jurisdiction over the operations/services specified in the Contract, with a copy to the other party, if required. Such reference shall state that it is made pursuant to this Clause. Not later than 28 (twenty eight) day after the day on which he received such reference, the Competent Authority shall give written notice of his decision to the Contractor. Such decision shall state that it is made pursuant to this Clause. Subject]to the other forms of settlement hereinafter provided, the Employer's decision in respect of every dispute or difference so referred shall be final and binding upon the Contractor. Unless the Contract has already been repudiated or terminated, the Contractor shall, in every case, continue to proceed with the work with all due diligence and Contractor shall give effect forthwith to every such decision of the Employer until or unless the same shall be revised in an amicable settlement or as hereinafter provided.

23.2 Remedy when the Employer's Decision is Not Accepted: If the Contractor be dissatisfied with any decision of the Employer, or if the Employer fails to give notice of his decision on or before 28 (twenty eight) days after the day on which he received the reference, then the Contractor may, on or before the twenty eighth day after the day on which he received the notice of such decision, or on or before the twenty eighth day after the day on which the said period of 28 days expired, as the case may be, give notice to the Employer, of his intention to commence arbitration for settlement of the dispute. If the Employer has given notice of his decision as to a matter in dispute to the Contractor and no written notice to commence arbitration has been given by the Contractor on or before the twenty eight days after the day on which the contractor received notice as to such decision from the Employer, the said decision shall become final and binding upon the Contractor.

23.3 Amicable settlement: Where notice of intention to commence arbitration has been given in accordance with Sub-Clause 23.4, arbitration shall not be commenced unless an attempt has first been made by the parties to settle the dispute amicably. Provided that, sixth day after the day on which the notice of intention to commence arbitration was given, whether or not any attempt at amicable settlement thereof has been made.

23.4 Arbitration: Any dispute in respect of which:

- (a) The decision, if any, of the Employer has not become final and binding pursuant to Sub-Clause 23.2, and
- (b) Amicable settlement has not been reached within the period stated in Sub-Clause 23.3, shall be finally resolved by arbitration as per the procedure given in Clause 23.5.

23.5 Sole Arbitration The contract shall be referred to the sole arbitrator, appointed by the Employer and the Contractor. The arbitration will take place in accordance with Indian Arbitration and Conciliation Act, 1996 and the arbitration will take place at Delhi. Arbitration may be commenced prior to or after

Completion of the completion of contract, provided that the obligations of the Employer and the contractor shall not be altered by reason of the arbitration being conducted during the progress of the contract.

23.6 Contractor to Execute Operation/Service pending settlement: whether the dispute is referred to the Employer, to amicable settlement, or to the law courts, as the case may be, the Contractor shall, unless the Contract has been repudiated or terminated, proceed to execute and comprehensives the Works with all due diligence pending settlement of the said dispute of difference.

11. Considering the overall facts and circumstances of the case, the petition is allowed. The disputes are referred to the arbitration, to be conducted under the aegis of Delhi High Court Arbitration Centre who will appoint sole Arbitrator from the list maintained by it. The fee shall also be paid to the sole arbitrator as per rules thereof. Parties shall appear before the Delhi High Court Arbitration Centre on 18th February, 2013. The Arbitrator appointed by the Delhi High Court Arbitration Centre shall give prior notice before commencing the proceedings. Both parties would be entitled to file claims and counter claims before the learned Arbitrator who will consider the same as per merit of the case. The petitions stand disposed of. A copy of the order be sent to Delhi High Court Arbitration Centre. Dasti.