

(2013) 04 DEL CK 0241

In the Delhi High Court

Case No : Arbitration Petition No. 259 of 2012

Development Management Trust

APPELLANT

Vs

Rail Vikas Nigam Ltd.

RESPONDENT

Date of Decision : 25-04-2013

Acts Referred:

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

Citation : (2013) 04 DEL CK 0241

Hon'ble Judges : Manmohan Singh, J

Bench : Single Bench

Advocate : Arjun Krishnan, for the Appellant; Anil Seth and Mr. M.K. Pathak, for the Respondent

Final Decision : Allowed

Judgement

Manmohan Singh, J.—The petitioner has filed the present petition u/s 11(6) of the Arbitration and Conciliation Act, 1996 for appointment of a sole independent arbitrator. Brief facts as culled out from the petition are that the petitioner is engaged in the work of collection and analysis of data for various government and non-government projects and the respondent is a public sector enterprise created to undertake project development, mobilization of financial resources and implement projects pertaining to strengthening of Golden Quadrilateral and Port Connectivity, and creating rail transport capacity on a commercial format. It is stated in the petition that on 22nd July, 2005, the respondent issued a "Request for Proposal for Appointment of NGO" inviting the petitioner to submit its technical and financial proposals for NGO services required for implementation of the Resettlement Plan for the "Rajatgarh-Barang Doubling Railway Line" project.

2. The total value of the contract was Rs. 7,04,396/- and the duration of the contract was eight months. While the work was being executed, the respondent changed the alignment of the Railway tracks. As a result of change of alignment, the number of villages affected by the doubling project increased and the

number of project affected persons was tripled due to which the project schedule could not be adhered to. On 19th September, 2006 the respondent issued a letter to the petitioner requesting it to suspend work temporarily from 20th September, 2006. By letter dated 24th April, 2007, the respondent asked the petitioner to renew the work by extending the contract for a period of three months at a monthly compensation of Rs. 86,650/-. The petitioner thereafter completed its work which was acknowledged by the respondent on 11th December, 2007. Out of the total contract value of Rs. 7,04,396/-, Rs. 4,57,857/- was paid by the respondent. A balance amount of Rs. 2,46,539/- is due and payable. The petitioner is also entitled to compensation for keeping site office operational and keeping its personnel and equipment mobilized.

3. Despite several meetings and requests for release of the amount due and payable, the respondent did not pay the amount. As there was arbitration clause in the contract, by notice dated 22nd October, 2010, the petitioner invoked the arbitration clause and requested for appointment of Sh. D.C. Awasthi to settle the disputes between the parties. However, the respondent has not paid the amount nor appointed the arbitrator or accepted the name suggested by the petitioner within stipulated period of thirty days. The petitioner also wrote a letter dated 2nd December, 2012 requesting that the amount due to the petitioner be released instead of forcing the parties to commence arbitration proceedings. However, the respondent failed to settle the dispute. Thus, the present petition.

4. Notice of this petition was served upon the respondent. The first submission of the learned counsel for the respondent is that the petitioner has not invoked the arbitration clause, as the petitioner itself has withdrawn the invocation of arbitration by letter dated 2nd December, 2010. After the withdrawal of the arbitration, the petitioner cannot now invoke the arbitration afresh. The said submission of the respondent is without any force. In case, the entire correspondence exchanged between the parties is read together, it appears that after sending the notice for arbitration dated 22nd October, 2010 appointing thereby Sh. D.C. Awasthi as petitioner's nominee, there was no response in writing by the respondent, rather the respondent offered to settle the dispute. Several meetings were held as recorded in the letter dated 2nd December, 2010 (Annexure-P15). In these meetings, the respondent's Officers assured the petitioner that the claim made by the petitioner would be settled after approvals. It was in that context, the petitioner wrote that the arbitration proceedings could be withdrawn if the claims were considered and settled by the respondent. Thus, the first submission of the respondent is rejected.

5. The second submission of the learned counsel for the respondent is that the petitioner is unnecessarily combining two contracts in the present petition. According to him, the Supplementary Agreement dated 23rd July, 2007 which was executed between the parties has no arbitration clause. As far as the first Agreement dated 7th March, 2006 is concerned, according to the counsel for the

respondent, the same is ceased to operate after the issuance of letter dated 24th April, 2007 by the respondent and thereafter the execution of Supplementary Agreement dated 23rd July, 2007.

6. The said submission of the learned counsel for the respondent is also rejected, as the same has no force. The mere reading of the Supplementary Agreement dated 23rd July, 2007 shows that the said agreement was part and parcel of the agreement dated 7th March, 2006 which was, in fact, in the nature of the amendment to the original agreement. As per Clause 6 of the Supplementary Agreement, it is clearly mentioned that the other terms and conditions including the arbitration clause of the Agreement dated 7th March, 2006 would remain the same.

7. The last submission of the learned counsel for the respondent that the claims of the petitioner are hopelessly barred by time, as the same have been raised after over 5 years of completion of the work.

8. As held by the Supreme Court of India in the case of Indian Oil Corporation Ltd. Vs. SPS Engineering Ltd., a decision on the question/issue of limitation is to be left to the arbitrator. No doubt, the respondent is entitled to raise the said plea of limitation before the Arbitrator who will also consider the same as per its own merits. However, as far as the reliefs sought by the petitioner in the present case are concerned, the same cannot be denied merely on the plea of limitation, the issue which is denied by the petitioner at this stage.

9. Accordingly, the present petition is allowed. Mr. Ashish Jain, Advocate (Mobile No. 9811125100/23381115, Chamber No. 7 Lawyers Chambers, Delhi High Court) is appointed as a sole Arbitrator to adjudicate upon the disputes and differences between the parties as mentioned in this petition. The fees of the learned Arbitrator shall be payable according to the schedule of fees fixed by Delhi High Court Arbitration Centre under its rules. Both the parties are granted liberty to file their claims and counter claims before the learned Arbitrator in accordance with law. The petition is disposed of. A copy of the order be communicated to the learned sole Arbitrator. Copy of the order be given dasti to both the parties.