

(2009) 12 DEL CK 0214

In the Delhi High Court

Case No : Arbitration Petition No. 53 of 2009

Jindal Steel and Power Limited

APPELLANT

Vs

N.S. Atwal, Sole Proprietor Guru Mehar Construction

RESPONDENT

Date of Decision : 03-12-2009

Acts Referred:

Arbitration and Conciliation Act, 1996 — Section 11

Citation : (2009) 12 DEL CK 0214

Hon'ble Judges : Valmiki J Mehta, J

Bench : Single Bench

Advocate : Arvind Nigam and A.S. Mathur, for the Appellant; Raj Shekhar, Tanveer A. Mir, for Intervener and Prem Inder Kaur, for the Respondent

Final Decision : Dismissed

Judgement

Valimiki J. Mehta, J.—This is a petition u/s 11 of the Arbitration and Conciliation Act, 1996. The petitioner seeks reference of the disputes pertaining to and arising out of a Soft Loan of Rs. 7.17 crores requested by the respondent vide its letter dated 13.6.2005 from the petitioner. The relevant portion of this letter reads as under:

We would be grateful, if you kindly help us with one-time Soft Loan of Rs. 7.17 Crores recoverable over a period of five years.

2. Pursuant to this request, the petitioner advanced a sum of Rs. 6.63 crores as loan to the respondent.

3. It may be noted that the parties had already entered into another commercial relationship vide a work order dated 2.3.2001 issued by the petitioner upon the respondent whereby the respondent was to carry out various services of excavation for the petitioner at a site near DongaMohua Village District Rajgarh, M.P..

4. This work order dated 2.3.2001, was for a period of four years. The work

order contained an Arbitration Clause 18 and which is reproduced below:

Arbitration Clause- In the event of any dispute, it will be settled as per the provisions of the Arbitration & Conciliation Act, 1996 where award shall be binding on both the parties and cannot be challenged in the court of law.

5. Mr. Nigam, learned senior counsel for the petitioner has contended that the commercial relationship with respect to the grant of Soft Loan was a part and parcel of the first commercial relationship of providing excavation works vide the work order dated 2.3.2001. Mr. Nigam has drawn my attention to the letter dated 22.11.2006 of the respondent to the petitioner, para 10 of which reads as under:

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10. All the loans given to us earlier were planned in a manner that these would be refunded back to you within the contractual time frame indicated earlier and installments were fixed accordingly. You have been recovering regularly from our running bills as per the agreed terms and we would have been in a position to return all loan installments, had the work continued as per the original extension letter dated 22 August 2005. The loans, mentioned by you to be paid back to you as outstanding, are basically due to your termination of the contract for which the contract provides the remedy of the Arbitration clause.

6. Mr. Nigam has contended that since the respondent accepts that the loans have to be repaid from the running bills, consequently, the main work order dated 2.3.2001 gets incorporated by reference in the Soft Loan Agreement in terms of the letter dated 13.6.2005 of the respondent.

7. The counsel for the respondent per contra has argued that there are two separate independent commercial relations between the parties. One under the work order dated 2.3.2001 and the second pursuant to the respondent's letter dated 13.6.2005. The counsel for the respondent has also contended that merely because the respondent choose the method of making repayment of the Soft Loan from the bills payable under the work order dated 2.3.2001, cannot thereby mean that the Soft Loan becomes part of the work order dated 2.3.2001 or that it has been agreed that both the commercial relationships get automatically intertwined and that the arbitration clause in the work order dated 2.3.2001 would become a part and parcel of the Soft Loan transaction also.

8. Mr. Nigam, in rejoinder has stated that the repayment of the loan was to be co-terminous with the work order and consequently, once the repayment is co-terminous with the work order, the terms of the work order which contained the arbitration clause will entitle the petitioner to seek reference of the disputes with respect to the Soft Loan also, in terms of Clause 18 of the work order dated 2.3.2001. At this stage, I may state that the work order dated 2.3.2001 was apparently substituted by a work order dated 4.8.2006 and in which there is a same arbitration clause except that it is Clause 19 and not Clause 18 as contained in the work order dated 2.3.2001, though this is denied by the respondent. In view of what is decided by me hereafter, nothing will turn on the

fact whether there was a subsequent work order or not.

9. In a petition u/s 11, the Court, before the disputes are referred to arbitration, has to be satisfied that the disputes which are sought to be referred to arbitration are covered by an arbitration agreement. In this case, admittedly, the arbitration clause is only in the work order dated 2.3.2001 by which the respondent was awarded work of excavation by the petitioner. The Soft Loan was provided much later, and in fact, after the expiry of the original period of four years of the work order dated 2.3.2001. A reference to the letter dated 13.6.2005 makes it quite clear that the transaction of loan is a totally independent transaction and is not inter-twined with the main work order dated 2.3.2001 and it cannot be said that both contracts merged with each other. During the course of arguments, I specifically put a query to the learned senior counsel for the petitioner as to whether while granting the loan in terms of the request dated 13.6.2005 of the respondent, was any written confirmation given by the petitioner that the soft loan which is being provided would be treated as an advance in terms of the work order dated 2.3.2001. To this query, Mr. Nigam very fairly stated that neither was any written communication given pursuant to the letter dated 13.6.2005 of the respondent nor is there any mention of any such communication in the petition. The query of the court was for the reason that unless and until there is a written intimation pursuant to the letter dated 13.6.2005, from the petitioner to the respondent that the Soft Loan which is being provided would be treated as an advance under the work order dated 2.3.2001, only then, would the court arrive at the conclusion that both the contracts get merged and the arbitration clause gets incorporated by reference. Since, admittedly, there is no written document on record to support the contention of the petitioner that the loan which was given would in fact be treated as an advance under the work order, I am unable to agree with the contention of the counsel for the petitioner that the arbitration clause contained in the work order dated 2.3.2001 and also the subsequent work order dated 4.8.2006 will get incorporated in the Soft Loan transaction entered into between the parties.

10. In view of the aforesaid discussion, no doubt there is an arbitration clause with respect to the disputes arising between the parties pursuant to the work orders dated 2.3.2001 and 4.8.2006 related to the excavation work done by the respondent and so awarded by the petitioner, however, there is no arbitration clause with respect to the Soft Loan given by the petitioner to the respondent. It may be that there are disputes with respect to the Soft Loan granted to the respondent by the petitioner, but such disputes are not arbitrable because there is no arbitration clause pertaining to this Soft Loan transaction between the parties. The petitioner therefore, if so advised is fully entitled to pursue its legal remedies by way of a suit in a civil court, but, to seek the reference of such disputes to arbitration in the opinion of this Court is not a proper remedy.

11. In view of the above, I do not find any merit in this petition and which is

therefore dismissed with costs of Rs. 25,000/-.