

(2022) 02 DEL CK 0048

In the Delhi High Court

Case No : Arbitration Petition No. 41 Of 2022

M/S Neptune India Ltd

APPELLANT

Vs

New Delhi Municipal Council

RESPONDENT

Date of Decision : 08-02-2022

Acts Referred:

Constitution Of India, 1950 — Article 12

Arbitration And Conciliation Act, 1996 — Section 11(6), 12

Citation : (2022) 02 DEL CK 0048

Hon'ble Judges : Suresh Kumar Kait, J

Bench : Single Bench

Advocate : Vishal Ganda, Siddharth Kaushik, Rohit Gandhi, Ayandeb Mitra, Yashika Sharma, Kanika Malhotra

Final Decision : Disposed Of

Judgement

Suresh Kumar Kait, J

Â The hearing has been conducted through video conferencing.

1. The present petition has been filed under Section 11(6) of the Arbitration and Conciliation Act, 1996 seeking appointment of sole Arbitrator to

adjudicate the disputes with respondent.

2. As per the averments made in the present petition, respondent is a state within the meaning of Article 12 of the Constitution of India and the

respondent advertised a Request for Proposal (RFP) for selection of Concessionaire for Design, Development, Implementation, Operation and

Maintenance of Smart Parking Solution for on street, off street and indoor parking spaces in NDMC area on Public Private Partnership (PPP) model.

3. It is further averred that on 10.07.2017, respondent issued letter of acceptance of tender to the petitioner and Agreement No. 01/EE

(WS)/SCP/2017-2018 dated 09.08.2017 was executed between the parties. Pursuant to signing the Agreement, the 5059 ECS were handed over to the petitioner on 01.08.2017 and the remaining ECS were allotted on 01.07.2019. In terms of the Agreement, the Concessionaire was required to pay Rs. 75 lacs per month for 5392 Equivalent Car Space (ECS) or 61% of the gross revenue, whichever is higher. For any change in numbers of car slots from 5392 during the concession period the fee was to be increased or decreased proportionately. The said Agreement was executed for a period of seven years.

4. During subsistence of the Agreement, petitioner suffered losses and vide various communications and reminders repeatedly informed the respondent about loss of revenue due to shortage of Equivalent Car Space (ECS) allotted to the petitioner and requested for proportionate reduction be made in the license fee. Further, various other issues arose and resolution of the same was request for, however, respondent deliberately avoided the same. On 22.02.2021, petitioner again sought reconciliation of account. However, respondent vide communication dated 22.02.2021 made a demand of Rs 4,06,24,007/- from petitioner. Petitioner was shocked to receive demand of license fee of Rs. 1,53,71,936/- from the respondent for the month of June 2020 and July 2020 when Delhi was under lockdown.

5. Further, Govt. of India on 13th May, 2020 issued an Office Memorandum on the invocation of Force Majeure Clause. However, respondent did not give the benefit of the OM dated 13.05.2020 on the alleged ground that the petitioner is a defaulter and is in breach of contractual obligations prior to advent of COVID 19 pandemic.

6. Thereafter, petitioner vide notice dated 04.10.2021 called upon the respondent for joint discussion to- resolve the outstanding disputes and differences arising out of the Agreement No.OVEE (WS)/SCP/2017-2018 dated 09.08.2017 or else petitioner would be forced to take recourse to remedies available to it as per Clause 12.1 of the RFP. However, no response was received from the respondent. Subsequently, petitioner served a notice dated 20.10.2021 upon respondent seeking invocation of arbitration. However, respondent did not appoint any Arbitrator to adjudicate the dispute between the parties. Hence, the present petition has been filed.

7. Learned counsel appearing on behalf of respondent has disputed the

averments made in this petition, however, has agreed that disputes can be resolved through arbitration. Accordingly, an independent sole Arbitrator may be appointed to adjudicate the disputes between the parties.

8. In the light of above, the present petition is allowed. Accordingly, Mr. Justice (Retd.) M. N. Rao (Mobile: 9811305400) is appointed sole Arbitrator

to adjudicate the dispute between the parties.

9. The fee of the learned Arbitrator shall be governed by the Fourth Schedule of the Arbitration and Conciliation Act, 1996.

10. The learned Arbitrator shall ensure compliance of Section 12 of Arbitration and Conciliation Act, 1996 before commencing the arbitration.

11. The present petition stands disposed of accordingly.

12. A copy of this order be sent to the learned Arbitrator for information.