
(2022) 07 UK CK 0005

In the Uttarakhand High Court

Case No : Arbitration Application No. 14 Of 2022

M/s Piyush Infratech Pvt. Ltd.

APPELLANT

Vs

Uttarakhand Jal Vidhut Nigam Limited And Another

RESPONDENT

Date of Decision : 01-07-2022

Acts Referred:

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

Citation : (2022) 07 UK CK 0005

Hon'ble Judges : Vipin Sanghi, CJ

Bench : Single Bench

Advocate : Prateek Tripathi, Vinay Kumar, B.S. Parihar

Final Decision : Allowed

Judgement

Vipin Sanghi, CJ

1) The applicant has preferred the present application under Section 11(6) of the Arbitration and Conciliation Act to seek appointment of an Arbitrator to adjudicate the disputes between the parties arisen out of agreement no. 06/DGM (CM-BV) Maneri/13-14 dated 25.02.2014.

2) The applicant was awarded the said contract in response to the tender floated by the respondent No. 1 for construction of protection wall around reservoir rim of Joshiyara Barrage of Maneri Bhali Stage- II, HEP at Uttarkashi.

3) It is the case of the applicant that the disputes have arisen between the parties in relation to the performance of the work under the contract. The contract between the parties contains an arbitration agreement in Clause 55, according to which, all question of disputes relating to the meaning of the specification design, drawing and instructions as to the quality of workmanship or materials used on the work or as to any other question claim, right, matter or thing, whatsoever in any way arising out of or relating to the contract, designs, drawings, specifications, estimates, instructions, orders or the condition or otherwise concerning the work, or the execution or failure to execute the same,

shall be adjudicated in accordance with the provisions of the Arbitration and Conciliation Act. The agreement, inter alia, provides that for claims upto rupees ten crores, the case shall be referred to sole Arbitrator to be appointed by the Principal Secretary / Secretary (Energy) GoU. However, where claims exceed rupees ten crores, a three member Arbitral panel shall be constituted for arbitration, one to be nominated by the contractor, the second to be nominated by UJVNL, and the third by mutual understanding / consensus of both the nominated arbitrator.

4) The admitted position is that despite invocation of arbitration on 09.10.2020 by the applicant, the respondents did not nominate an Arbitrator. Even the applicant did not nominate one Arbitrator in terms of the aforesaid agreement. Since the matter has not proceeded, the applicant has now preferred this application.

5) Learned counsels for the respondents do not dispute the factum of the applicant being awarded the contract in question, as also the factum of the arbitration agreement contained in the General Conditions of Contract. It is not disputed that disputes have arisen between the parties which are referable to Arbitrator. It is, however, pointed out by learned counsel for the respondents that since the claims of applicant are in excess of rupees ten crores, under the arbitration agreement a three member Arbitral Tribunal is required to be constituted. Since the parties did not act in terms of the arbitration agreement by nominating one arbitrator each, I am inclined to appoint a sole Arbitrator to adjudicate the dispute between the parties.

6) Accordingly, the Arbitration Application is allowed. I appoint Mr. Justice B.S. Verma, (Retd.) Judge, Uttarakhand High Court, as the sole Arbitrator to adjudicate the disputes which have arisen between the parties under the aforesaid agreement.