
(2018) 02 J&K CK 0040
In the Jammu And Kashmir High Court
Case No : 120 of 2010

M/S Trust House Constructions

APPELLANT

Vs

State of J&K and others

RESPONDENT

Date of Decision : 07-02-2018

Acts Referred:

[Arbitration and Conciliation Act, 1996](#), [Section 11](#) - Appointment of arbitrators

Citation : (2018) 02 J&K CK 0040

Hon'ble Judges : Sanjeev Kumar

Bench : Single Bench

Advocate : M.A.Makdoomi, R.A.Khan

Final Decision : Dismissed

Judgement

1. The case set up by the petitioner in this petition is that a contract for construction of Tunnel on Sumbal link from RD 640 M to RD 3060 M was allotted by respondent Nos. 1 to 3 in favour of M/S Karamchand Thapar & Brothers, i.e., respondent No.4. It is submitted that owing to the disturbances and turmoil in the valley, respondent No.4 could not complete the execution of the work and thus, approached the petitioner-firm for execution of the allotted contract. Accordingly, an agreement claims to have been drawn and executed between the petitioner and respondent No.4. It is claimed by the petitioner that it executed the balance work to the best satisfaction of respondent No.4 and after its satisfactory completion the work was handed over to the respondent-Corporation. It is submitted by the learned counsel for the petitioner that the petitioner approached respondent No.4 many times for release of his security deposit/ retention money which had swallowed to the tune of Rs.33,18,758/-

but the same was not released by the latter. It is further submitted by the learned counsel for the petitioner that due to some dispute with regard to

the payments between respondent No.4 and the Corporation, the matter was referred to the Arbitral Tribunal in terms of the arbitration clause

contained in the contract agreement executed between respondent Nos. 2 and 4.

2. The grievance projected by the petitioner in this petition is that while the arbitration proceedings between respondent No.2 and 4 were going on

before the Arbitral Tribunal, the petitioner who was vitally interested in the aforesaid proceedings having executed the balance work on behalf of

respondent No.4, moved an application before the Arbitral Tribunal seeking its impleadment, but its application was turned down by the Arbitral

Tribunal vide order dated 24.10.2009, impugned in this petition. The petitioner assails the order impugned primarily on the ground that the

petitioner has a vital interest in the arbitration proceedings pending before the Arbitral Tribunal and its presence in the arbitration proceedings

would facilitate effective adjudication of the lis before the Arbitral Tribunal. Learned counsel for the petitioner argues that since most of the work,

subject matter of arbitration has been executed by it at the behest of respondent No.4, as such, if the arbitration proceedings are conducted and

decided in its absence, it would suffer irreparable loss and injury.

3. On the other hand, learned counsel appearing for the respondents submits that there is no privity of contact between respondent Nos. 1 to 3

and the petitioner and to the arbitration agreement the petitioner is not a party. He, therefore, submits that the petitioner not being a party to the

arbitration agreement has no right to participate in the arbitration proceedings which are being conducted by the Arbitral Tribunal to adjudicate

upon the disputes arising out of the contract entered into between respondent No.4 on the one part and respondent No.2 on the other part.

4. I have considered the submissions made by learned counsel for the parties and perused the record.

5. Admittedly, the work in question was allotted by respondent No.2 in favour of respondent No.4 and there is no privity of contract between the

petitioner and respondent No.2. The subject matter of adjudication before the Arbitrator is with respect to the contract executed between

respondent No.2 and respondent No.4. It is this contract which contains

arbitration clause for adjudicating upon the disputes between the parties to the contract. That being so, the Arbitral Tribunal was right in coming to the conclusion that the application of the petitioner for impleadment/intervention in arbitration proceedings is not maintainable. The mandate of Arbitral Tribunal is only to adjudicate upon the disputes between the parties to the arbitration agreement which arise out of the contract agreement containing the arbitration clause, executed between the parties. The petitioner may have an independent claim against respondent No.4 for which it needs to work out its remedies but surely it has no locus to be party in the arbitration proceedings pending before the Arbitral Tribunal between respondent Nos. 2 and 4 who alone are the parties to the arbitration agreement.

6. The question as to party to the arbitration proceedings was examined by the Supreme Court, though in the context of Section 11 of the Arbitration and Conciliation Act, 1996 in the case of Indowind Energy Ltd. V. Wescare (I) Ltd. and anr.; AIR 2010 SC 1793. One of the questions formulated by the Supreme Court in the aforesaid case was as under:- Whether an arbitration clause found in a document ""agreement"" between two parties, could be considered as a binding arbitration agreement on a person who is not a signatory to the agreement?

After discussing the whole case law on the subject, the Supreme Court concluded as contained in paragraph No.13 of the judgment, which for facility of reference is reproduced hereunder:-

13. Wescare puts forth the agreement dated 24.2.2006 as an agreement signed by the parties containing an arbitration agreement but the said agreement is signed by Wescare and Subuthi and not by Indowind. It is not in dispute that there can be appointment of an arbitrator if there was any dispute between Wescare and Subuthi. The question is when Indowind is not a signatory to the agreement dated 24.2.2006, whether it can be considered to be a "party" to the arbitration agreement. In the absence of any document signed by the parties as contemplated under clause (a) of sub-section (4) of section 7, and in the absence of existence of an arbitration agreement as contemplated in clauses (b) or (c) of sub-section (4) of section 7 and in the absence of a contract which incorporates the arbitration agreement by reference as contemplated under sub-section (5) of

section 7, the inescapable conclusion is that Indowind is not a party to the arbitration agreement. In the absence of an arbitration agreement

between Wescare and Indowind, no claim against Indowind or no dispute with Indowind can be the subject- matter of reference to an arbitrator.

This is evident from a plain, simple and normal reading of section 7 of the Act.

On the analogy of the aforesaid judgment, petitioner who is not a party to the agreement containing an arbitration clause cannot be party to the

arbitration proceedings between the parties to the arbitration agreement.

7. Viewed, thus, there is no merit in this petition and the same is therefore, dismissed. The petitioner, however, is left free to work out its remedies

against respondent No.4.