

(2016) 06 RAJ CK 0037

In the Rajasthan High Court

Case No : Civil Arbitration Application No. 14 of 2016

M/s. Vistaar Infratech (I) Pvt. Ltd.

APPELLANT

Vs

Managing Director, Bharat Heavy Electricals Limited and
Another.

RESPONDENT

Date of Decision : 03-06-2016

Acts Referred:

Arbitration and Conciliation Act, 1996 — Section 11(5)

Citation : (2016) 3 DNJ 1081 : (2017) 1 WLC 309

Hon'ble Judges : Mr. Mohammad Rafiq, J.

Bench : Single Bench

Advocate : Mr. Raj Kumar Jain, Advocate, for the Appellant;

Final Decision : Dismissed

Judgement

Mr. Mohammad Rafiq, J. -This application has been filed by the applicant, M/s. Vistaar Infratech (I) Pvt. Ltd. against Managing Director, Bharat Heavy Electricals Limited and Managing Director, Rajasthan State Vidyut Utpadan Nigam Limited (RVUNL) under Section 11(5) and 6(a) and (c) of the Arbitration and Conciliation Act, 1996(for short "the Act") seeking appointment of a retired High Court Judge as sole arbitrator to resolve the dispute between them and payment of Rs. 11,00,000/- to the applicant along with interest @ 12% p.a. till its realisation with legal expenses.

2. Non-applicant No. 1 invited tender for carrying out the Topographical Survey, Area Drainage Survey, Hydrographical Survey and Geotechnical Survey at Suratgarh site, as per the scope of work, general terms and conditions, time period and mode of payments. The applicant submitted its bid, which was accepted by Non-applicant No. 1 and the applicant was awarded work order on 03.01.2012. According to the applicant, after completion of work, it submitted bill for Rs. 11,18,482/- but the same was declined by the non-applicants on the premise that the applicant did not complete the contractual work whereas the applicant performed the work as per work order within the stipulated period and

as per the terms and conditions of the contract. Non-applicants referred the dispute to sole arbitrator Shri Ajai Kumar Saxena, Ex-GM(CP), HEEP, BHEL, Haridwar. As per averments made in the application, the applicant filed statement of claim before the sole arbitrator on 14.02.2015 and the non-applicant No. 1 submitted its reply to the said claim on 09.06.2015. The sole arbitrator on the basis of pleadings of the parties, rejected claim of the applicant vide order dated 11.09.2015. It is submitted that the applicant has completed his project and environment clearance for this project has also been obtained. As per Sections 11(5) and 11(6)(a) and (c) of the Act, arbitrator can be appointed by this Court to adjudicate the dispute between the parties.

3. Perusal of order dated 11.09.2015 indicates that the Arbitrator has upheld the objection of the non-applicants that the statement of claim has not been filed by the applicant in accordance with Section 23 of the Act because mere furnishing of a table of bills and copy of work order does not set up claim of the applicant. The sole arbitrator has concluded in the aforesaid order that the claimant has failed to submit its claim in accordance with Section 23(1) of the Act, despite various opportunities granted to it. Whatever has been submitted by him neither sets up any case, nor falls within the explanation given in Section 23(1) of the Act and, therefore, he terminated the proceedings.

4. Section 23(1) of the Act provides that within the period of time agreed upon by the parties or determined by the arbitral tribunal, the claimant shall state the facts supporting his claim, the points at issue and the relief or remedy sought, and the respondent shall state his defence in respect of these particulars, unless the parties have otherwise agreed as to the required elements of those statements. Section 25(1) of the Act provides that unless otherwise agreed by the parties, where, without showing sufficient cause, the claimant fails to communicate his statement of claim in accordance with sub-section (1) of Section 23, the arbitral tribunal shall terminate the proceedings. Section 32(1) of the Act provides that the arbitral proceedings shall be terminated by the final arbitral award or by an order of the arbitral tribunal under sub-section (2). Sub-section (2) of Section 32 of the Act further provides that arbitral tribunal shall issue an order for the termination of the arbitral proceedings where: (a) xxxxxxxx; (b) xxxxxxxx; (c) the arbitral tribunal finds that the continuation of the proceedings has for any other reason become unnecessary or impossible.

5. In view of above referred to clear provisions, arbitral proceedings in the present case stood terminated in accordance with provision of Section 32(2)(c) of the Act even prior to filing of the present application under Section 11 of the Act before this Court. Regardless of whether, aforesaid order is legally valid or otherwise, remedy of the applicant thereafter lies under Section 34 of the Act to get the same set aside in accordance with sub-section (2) and (3) thereof. Therefore, the present application under Sections 11(5) and 11(6)(a) and (c) of the Act cannot be held to be maintainable and the same is dismissed as being not maintainable.