
(2014) 07 MAD CK 0160
In the Madras High Court
Case No : Original Petition No. 736 of 2009

Plaza Properties Limited

APPELLANT

Vs

Balmer Lawrie and Co., Limited

RESPONDENT

Date of Decision : 03-07-2014

Acts Referred:

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

Citation : (2014) 07 MAD CK 0160

Hon'ble Judges : Satish K. Agnihotri, Acting C.J.

Bench : Single Bench

Judgement

Satish K. Agnihotri, Actg. C.J.

1. This application has been filed under Section 11(5) of the Arbitration and Conciliation Act, 1996 for appointment of an Arbitrator to resolve the disputes between the petitioner and the first respondent arising out of contract No.162 of 2001 dated 28.02.2003.

2. The second respondent proposed to construct three tanks at Secunderabad terminal at Ghatkesar and establish associated piping facility, size tank and miscellaneous work and offered the said work to various contractors. In response to the said offer, the first respondent applied to the second respondent, which after scrutiny of the bids received from various contractors, chose the first respondent to award the contract. Accordingly, purchase order was issued under No.EM-1842/ENP/ENG-292/BH dated 10.02.2003 to the first respondent, which is the binding contract between the second and first respondent. As per the said purchase order, the entire contract viz., construction of three storage tanks at Secunderabad was assigned by the second respondent to the first respondent. Under Clause 2.15 of the general terms of the work contract, the first respondent was granted power to appoint any number of sub-contractors to perform the work as set out in the said contract. In pursuance thereof, the first respondent had appointed the petitioner as their sub-contractor for the purpose of construction of storage tanks, associated pipes and other miscellaneous civil

work. The first respondent issued work order in favour of the petitioner vide CPP/162/03/59 dated 19.05.2003 to construct the storage terminal at Secunderabad and other civil work to the tune of Rs.1,97,31,122/75, which was later revised, and the final executed value of work was determined to the tune of Rs.2,10,05,428.94. In the contract dated 19.5.2003, the first respondent had mentioned that it is a back-to-back contract and all the terms and conditions of the contract will have a bearing on the first and second respondent. It was also stipulated that the payments will be released by the first respondent to the petitioner only after the receipt of the payment from the second respondent.

3. It is the case of the petitioner that as per the terms of the work order/contract dated 19.05.2003, the entire contract had to be completed within a period of seven months. Despite the contractual obligation cast upon the first respondent to prepare the drawings and supply the material to the petitioner, the first respondent did not do the same in time. As a result, the petitioner could not complete the contracted work within the stipulated time. Hence, according to the petitioner, the delay in executing the contracted works was due to the non-supply of materials and non-submission of drawings by the first respondent. It is submitted that owing to the above, the petitioner completed the work order only on 10.01.2005 and they had to keep the machinery and manpower idle for no fault of theirs, due to which they suffered heavy financial losses. Hence, according to the petitioner, the respondents are liable to compensate the petitioner on account of the wilful act or default on their part. Therefore, the petitioner raised a claim of Rs.29,56,000/-. The said claim was received by the first respondent, but they neither sent any objection nor replied to the petitioner's claim.

4. The petitioner submits that despite repeated requests and demands, neither the second respondent nor the first respondent have come forward to settle the legitimate claim of the petitioner. As a result, the petitioner approached the Ministry of Petroleum and Natural Gas on 17.03.2006, since the respondents are Government Companies coming under the Administrative Control of Ministry of Petroleum and Natural Gas. Based on the representation, the Ministry of Petroleum and Natural Gas issued a memo to the first respondent calling for their explanation, for which the first respondent sent a reply to the Ministry on 03.06.2006. In the said reply, the first respondent admitted the claim of the petitioner company, but pleaded that it is a back-to-back contract and that the second respondent has not paid the money to them (first respondent), as a result of which they were unable to make the payment to the petitioner. By letter dated 29.01.2007, the first respondent requested the second respondent to make the payment or refer the matter to arbitration for an amicable settlement. Even in the said letter, the first respondent authorised the petitioner to deal with the respondents directly for recovering the claim amount. After another representation to the Ministry on 12.05.2007, a tri-party meeting was arranged on 29.07.2007. In the meeting, the first respondent once again accepted the claim of the petitioner, but stated that since the first respondent has not paid the

money to them, they could not remit the same to the petitioner. In all the meetings, the Ministry of Petroleum and Natural Gas have also advised the respondents to settle the claim of the petitioner company. Despite the said advice and repeated requests by the petitioner, neither the first respondent nor the second respondent have come forward to settle the lawful claim of the petitioner. Therefore, the petitioner requested the first respondent to appoint an arbitrator to resolve the disputes. By letter dated 15.3.2006, the petitioner notified the first respondent that if an arbitrator was not appointed, the petitioner would be constrained to approach the Court for an appropriate relief. Since the respondents have not come forward with any reply, the petitioner has approached this Court for the relief as aforesaid. In the meantime, the petitioner filed O.A. No.150 of 2009 of the Act seeking an injunction to restrain the respondents from using the property which was constructed by them till the petitioner's claims were settled and the said application is pending adjudication.

5. I have heard the learned counsel for the petitioner and perused the materials available on record. Despite service of court notice and notice by paper publication, the respondents are not represented before this Court. So, this Court is left with no option but to decide the case on merits after hearing the counsel for the petitioner and on going through the documents.

6. Clause 14 of the General Terms & Conditions of the Works Contract entered into between the parties dated 19.5.2003 provides for arbitration of the disputes arising between the parties in connection with the contract and it reads as follows :-

14.1. All disputes and differences of whatsoever nature, whether existing or which shall at any time arise between the parties concerning the agreement, meaning, operation of effect thereof or to the rights and liabilities of the parties or arising out of or in relation thereto whether during or after completion of the contract or whether before after determination, foreclosure, termination or breach of the agreement (other than those in respect of which the decision of any person is by the contract, expressed to be final and binding) shall, after written notice by either parties to the agreement to the other of them and to the Appointing Authority mentioned, be referred for adjudication to the Sole Arbitrator.

7. After hearing the counsel for the petitioner and going through the records, I am of the prima facie opinion that the petitioner has made out a case for appointment of an arbitrator to decide the disputes between them and the respondents. The respondents have made matters worse for themselves by not entering appearance before this Court.

8. In the aforesaid facts and circumstances, this Court hereby appoints Thiru. N. Mohandass, a retired District Judge, as the Sole Arbitrator in this matter, to decide the disputes between the parties arising out of the Works Contract entered into between them on 19.5.2003. The learned Arbitrator shall enter upon

the reference and after issuing notice to the parties and upon hearing them, pass an award as expeditiously as possible, at any rate within a period of three months from the date of issuance of the notice. The learned Arbitrator is at liberty to fix the remuneration and other incidental expenses, which shall be borne by both the parties equally.

9. The original petition is accordingly allowed.