(2016) 04 RAJ CK 0117

In the Rajasthan High Court

Case No : . Arbitration Application No. 100 of 2013

Rajasthan State Mines & Minerals Ltd. APPELLANT

Vs

Managing Director RESPONDENT

Date of Decision : 29-04-2016

Acts Referred:

Arbitration and Conciliation Act, 1996 — Section 10, 11

Citation : (2017) 1 ArbiLR 284 : (2016) 4 RLW 2914 : (2016) 3 WLC 369

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

Bench : Single Bench

Advocate : Shri J.P. Sharma, Advocate, for the Applicant; Shri Sudesh Bansal, Advocate, for the Respondent

Final Decision : Allowed

Judgement

Mr. Mohammad Rafiq, J.—Applicant-Rajasthan State Mines and Minerals Ltd. has filed this application under Section 10 and 11 of the Arbitration and Conciliation Act, 1996, praying for appointment of an independent Arbitrator/ constitute Arbitral Tribunal as per Arbitration Clause No. 8 of the agreement dated 25.04.1989 signed and executed between the parties.

2. Foundational facts essential for deciding the application are that applicant is a Government of Rajasthan Enterprises known as Rajasthan State Mineral Development Corporation Ltd. but it was later amalgamated with the Rajasthan State Mines and Minerals Ltd. through Central Government Gazette Notification dated 20.02.2003 by which all assets, liabilities and affairs of the former vested unto the later and this fact is not disputed by the parties. An agreement was executed by and between the erstwhile Corporation and the respondent on 15.04.1999 for supply of Gypsum Powder from Hanumangarh Gypsum Project to the respondent on certain terms and conditions as settled in the said agreement during the financial year 1999-2000. Clause no.8 of the agreement provided reference of the dispute to the Arbitrator as per Standard Arbitration Clause of Indian Arbitration and Conciliation Act, 1996, which has been deemed to be part

of the agreement. Applicant has contended that it was agreed by agreement dated 15.04.1999 to supply 75000 MT Gypsum powder during the year 1999-2000. The respondent was required to give monthly delivery schedule by last week of every month for the subsequent month to the applicant to plan the production in advance. Applicant has allowed the credit of 60 days from the date of bill to the respondent. It was specifically mentioned in the agreement that the bills shall have to be paid within 60 days from the date of bill through demand draft in favour of the applicant. The price for supply of Gypsum Powder packed in HDPE bags was fixed; for Ex-Grinding Unit, Hanumangarh-Rs. 295/- PMT and for Ex-Hanumangarh Rail-Rs. 305/- PMT. These prices were inclusive of cost of filling, stitching of bags and loading into truck/wagons as the case may be, besides the cost of material. These rates also include royalty, State levies and octroi as applicable as on date, but are exclusive of Central Sales Tax which shall be charged extra as applicable against ''C'' Form. The said price was revised from Rs. 295/- PMT to Rs. 315/- PMT plus sales Tax and from Rs. 305/- PMT plus sales tax to Rs. 325/- PMT plus sales tax w.e.f. 9.11.1999 respectively under clause 4 of the agreement dated 15.4.1999. Increased rates were accepted by the respondent vide letter dated 3.4.2000. According to the applicant, it is as per the agreement dated 15.4.1999, the applicant supplied Gypsum Powder to the respondent regularly within the scheduled period, but the payment of the applicant was not made in time by the respondent. As per clause 6 of the agreement, it was obligatory on the part of non-applicant to pay the amount of bills within 60 days from the date of bill through demand draft in favour of the applicant payable at Hanumangarh Junction/Jaipur. The applicant made several efforts for releasing such overdue payment from the respondent by sending numerous letters and telegrams and also approached them personally.

3. Due to the exceptional delay in making payment by the respondent to the applicant, supply of Gypsum Powder was suspended. The respondent paid a sum of Rs. 18.95 lacs on 13.3.2000 to the applicant. A sum of Rs. 85 lacs was still outstanding due against the non-applicant. The applicant sent letters on 5.4.2000, 15.5.2000, 10.8.2000 and 19.1.2001 to the non-applicant with a request to release the outstanding amount, but all in vain. The non-applicant by letter dated 18.7.2000 disputed certain amounts shown outstanding in the bills submitted by the applicant for the financial year 1999-2000 and made request for reconciliation. A joint meeting was held on 24.9.2001, but in that meeting too, no consensus could be arrived. Applicant sent details of the bills and outstanding dues, totalling to Rs. 65,84,171 for a period from 15.3.1999 to 31.12.1999 for supply of Gypsum Power to the non-applicant. A legal notice through Counsel was also sent on 27.7.2001 showing outstanding dues of Rs. 71,64,464.79, but no payment was made. The respondent replied to the legal notice vide letter dated 28.9.2001 and requested for one month''s time to make payment, but thereafter no payment was made. Applicant thereafter vide registered AD letter dated 1/3.12.2001 requested for appointment of Arbitrator by the Chairman cum Managing Director and to settle the dispute, but nothing

transpired.

4. Shri J.P. Sharma, learned counsel for the appellant contended that applicant earlier filed S.B. Arbitration Application No. 34/2002 before this Court. The respondent on notice filed reply to the said application. The respondent did not deny the claim directly, but demanded reconciliation. This Court by order dated 4.5.2006 dismissed the application as premature. The applicant thereafter filed S.B. Civil Review Petition No. 16/2009 stating that in the joint conciliation meeting, the respondent did not accept the amount of Rs. 71,64,464 and thus reconciliation has failed. Otherwise, also the respondent neither made payment, nor denied the same till date. This Court by order dated 1.7.2013 disposed of the review petition. However, considering the rival submissions, this Court directed the applicant to file fresh arbitration application as per arbitration clause 8 of the agreement with the direction that the period of pendency of the arbitration application and review petition shall be excluded while counting the period of limitation for filing of the fresh arbitration application and accordingly disposed of the review petition by order dated 1.7.2013. Applicant again requested for payment of aforesaid due amount of Rs.71,64,464.79 with interest @ 18% from 1.1.2000 upto the date of payment vide letter dated 12.8.2013 followed by another letter dated 12.9.2013. The respondent denied the payment vide reply dated 13.9.2013 again stating that the outstanding amount was subject to reconciliation where after the due amount shall be paid as and when funds become available. Applicant again by letter dated 4.10.2013 requested to the respondent to release the payment as required details of the outstanding dues along with bill number etc. The details of the said bills and outstanding dues have been given in para 13(a) and (b) of the application. Prayer therefore has been made in the application for referring the dispute to the sole independent Arbitrator/Arbitral Tribunal.

5. Shri Sudesh Bansal, learned counsel for the respondent has opposed the application on the ground that this enormously belated and time barred application has been filed to revive the old and stale claim. His another objection is that clause no. 8 of the agreement cannot be said to be an arbitration clause. Learned counsel in support of his arguments has relied on the judgement of Supreme Court in System for International Agencies v. Rahul Coach Builders Private Ltd.-(2015) 13 SCC 436.

6. The material available on record and rival submissions do show existence of a live arbitrable dispute between the parties. Earlier application filed by the applicant under Section 11 of the Act in the year 2002 was dismissed by this court as premature on 4.5.2006, which application remained pending for as long as four years and thereafter the review petition filed by the applicant in the year 2009 was decided on 1.7.2013, which again remained pending for four years. It cannot be therefore said that the application is time barred or claim of the applicant is otherwise barred by limitation.

7. Clause-8 of the agreement reads as under:

"8. Arbitration - Standard arbitration clause of Indian Arbitration and Conciliation Act, 1996 shall form part of this deal/agreement."

8. I am not inclined to accept the argument that clause-8 of the agreement is not an arbitration clause. The cited judgement in System for International Agencies, supra is distinguishable on facts and is not applicable in the present case. In that case, the relevant clause, which was disputed to be arbitration clause reads as under:

"Disputes: In case of any dispute arising out of this agreement between the parties, the same shall be referred to the arbitration under the bye-laws of Indian Company''s Act, 1956 and all amendments of this Act up to date or shall be settled and decided by arbitration as per International Trade Laws and all amendments of this Act to date."

9. It would be evident from the aforesaid clause that the dispute arising out of agreement between the parties was required to be referred to the arbitration under the bye-laws of Indian Company''s Act, 1956 and all amendments of this Act upto date or shall be settled and decided by arbitration as per International Trade Laws and all amendments of this Act upto that date. Clause-8 of the agreement in the present case cannot be said to be in any way identical or similar thereto. Clause 8 herein is captioned as "Arbitration" and specifically provided that standard arbitration clause of Indian Arbitration and Conciliation Act, 1996 and shall form part of the agreement. Argument of the non-applicant, therefore, that it does not tantamount to arbitration clause in the agreement, cannot be said to be countenanced.

10. Present application therefore deserves to succeed and is accordingly allowed. Hon''ble Mr. Justice Satish Kumar Mittal (Former Chief Justice), Plot No. 1545, Sector-7C, Chandigarh-160019 (Telephone Phone No. 0172-2740224, Mobile No. 09780008107) is hereby appointed as an independent Arbitrator to resolve the disputes between the parties. The cost of arbitration proceedings and the arbitration fees shall be as per the Manual of Procedure for Alternative Dispute Resolution, 2009, of this Court, as amended from time to time.

11. A copy of this order be sent to Hon''ble Mr. Justice Satish Kumar Mittal (Former Chief Justice), Plot No. 1545, Sector-7C, Chandigarh-160019 (Telephone Phone No. 0172-2740224, Mobile No. 09780008107)