

(2019) 01 DEL CK 0428

In the Delhi High Court

Case No : Original Miscellaneous Petition (T) (COMM.) No. 12, 13, 14 Of 2019

Ratna Infrastructure Projects Pvt. Ltd

APPELLANT

Vs

Meja Urja Nigam Private Limited

RESPONDENT

Date of Decision : 31-01-2019

Acts Referred:

Arbitration and Conciliation Act, 1996 — Section 11, 15, 15(2)

Citation : (2019) 01 DEL CK 0428

Hon'ble Judges : Rajiv Shakdher, J

Bench : Single Bench

Advocate : Kiran Suri, Abhay N. Das, Fahad Imtiaz, Debolina Roy, Aishwarya Kumar, Jayant Mehta, Aman Varma, Anshula Grover, Parth Singh Chaudhari, Pranav Gopalakrishnan

Final Decision : Disposed Off

Judgement

Rajiv Shakdher, J

I.A. No.1438/2019 in O.M.P. (T) (COMM.) 12/2019

I.A. No.1440/2019 in O.M.P. (T) (COMM.) 13/2019

I.A. No.1442/2019 in O.M.P. (T) (COMM.) 14/2019

1. Allowed, subject to just exceptions.

I.A. No.1439/2019 in O.M.P. (T) (COMM.) 12/2019

I.A. No.1441/2019 in O.M.P. (T) (COMM.) 13/2019

I.A. No.1443/2019 in O.M.P. (T) (COMM.) 14/2019

2. These are applications for condonation of delay in re-filing.

3. The period of delay is 22 days.

4. For the reasons given in the applications, the delay is condoned.

5. The applications are, accordingly, disposed of.

O.M.P. (T) (COMM.) 12/2019

O.M.P. (T) (COMM.) 13/2019

O.M.P. (T) (COMM.) 14/2019

6. These are petitions whereby the petitioner seeks appointment of a substitute Arbitrator in terms of Section 15(2) of the Arbitration and Conciliation Act, 1996 (for short '1996 Act').

7. To be noted, the captioned petitions represent three cases which were being adjudicated upon by a sole Arbitrator.

7.1 These three cases are numbered as Arbitration Case nos.1/2013; 1/2014 and 1/2018.

8. The erstwhile Arbitrator was appointed by this Court in respect of all the three cases upon the petitioner instituting petitions under Section 11 of the 1996 Act.

9. Insofar as Arbitration Case nos.1/2013 and 1/2014 are concerned, a common order of appointment dated 11.4.2017, was passed whereas qua Arbitration Case no.1/2018, the matter was referred to the same Arbitrator by this Court, albeit, by an order dated 6.8.2018.

10. It appears that insofar as Arbitration Case nos.1/2013 and 1/2014 are concerned, they are at the stage of pronouncement of the award.

10.1 However, I am told by counsel for the parties that Arbitration Case no.1/2018 is still at the stage of completion of pleadings.

11. The reason the petitioner had to approach this Court is on account of the fact that the sole Arbitrator has withdrawn from the reference in respect of all three cases referred to hereinabove.

11.1 The erstwhile Arbitrator's decision to withdraw is reflected in his email dated 18.11.2018.

12. It is not disputed by the respondent that in respect of the aforementioned cases it exercised power under Clause 56 of the General Conditions of Contract (in short 'GCC') and appointed Hon'ble Mr. Justice Badar Durrez Ahmed, former Chief Justice, Jammu and Kashmir High Court as the substitute Arbitrator.

13. In the captioned petitions, though, the petitioner questions the right of the respondent to appoint a substitute Arbitrator, albeit, wholly from a legal stand point. The petitioner questions the right of the respondent to appoint a substitute Arbitrator as the earlier appointment had been brought about by virtue of the orders passed by this Court.

14. Ms. Suri, learned senior counsel, on instructions, says that while she has the highest regard for the appointee Arbitrator, these petitions are preferred only to

raise a red flag with respect to the lack of power in the respondent to appoint a substitute Arbitrator.

15. Mr. Mehta contends to the contrary and says that the power to appoint a substitute Arbitrator other than its own employee continues to vest in the respondent under Clause 56 of the GCC.

16. Since, the learned counsel for the parties otherwise have no difficulty with the appointee Arbitrator and have graciously agreed to continue the arbitration proceedings before him, for the moment, I need not rule on the varying stands taken by the parties on the construction of Clause 56 of the GCC in context of the provisions of Sections 11 and 15 of the 1996 Act.

17. Therefore, as agreed, the proceedings will continue in respect of the aforementioned three cases before the Hon'ble Mr. Justice Badar Durrez Ahmed from the stage at which they are presently positioned.

18. At this juncture, I must indicate that it is Ms. Suri's contention that since the aforementioned three cases are interlinked, the learned Arbitrator should pronounce the award(s) only after the proceedings in the third case i.e., Arbitration Case no.1/2018, stand completed.

19. Mr. Mehta, on the other hand, says that since the first two cases i.e., Arbitration Case nos.1/2013 and 1/2014, have reached the stage of pronouncement of the award, there is no necessity to delay their pronouncement.

19.1 It is also his contention that there is no linkage between the third case i.e., Arbitration case no.1/2018, and the other two cases i.e., Arbitration Case nos. 1/2013 and 1/2014.

19.2 Mr. Mehta also says that this very submission was made by the petitioner before this Court in O.M.P.(MISC.)(COMM.) 302/2018, which was repelled vide order dated 23.10.2018.

20. In my view, these are matters which the substitute Arbitrator would look into and, accordingly, take a view as to how he wants to proceed in the matter.

21. Therefore, for the foregoing reasons, no orders are called for in the captioned petitions.

22. The captioned petitions are, accordingly, closed.

23. In order to hasten the process, the learned counsel for the parties will appear before Hon'ble Mr. Justice Badar Durrez Ahmed, on 7.2.2019 at 5:00 p.m.

24. In case the date fixed by this Court is not convenient to the learned Arbitrator, he will fix a date proximate to the date mentioned hereinabove.

25. The Registry will dispatch a copy of the order to the learned Arbitrator.

26. Dasti.