
(2006) 04 DEL CK 0108

In the Delhi High Court

Case No : AA 201 of 2005

Sh. M.K. Garg

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 27-04-2006

Acts Referred:

Arbitration and Conciliation Act, 1996 — Section 11(6)

Citation : (2006) 04 DEL CK 0108

Hon'ble Judges : Swatanter Kumar, J

Bench : Single Bench

Advocate : Vivekanand with Sandeep Sharma and Dalip Kapoor, for the Appellant; Gitanjali Mohan, for the Respondent

Final Decision : Disposed Off

Judgement

Swatanter Kumar, J.—This is a petition u/s 11(6) of the Arbitration and Conciliation Act, 1996. Mr.M.K.Garg sole proprietor of M/s Manraj Enterprises submitted an offer in response to an invitation to tenders issued by respondents No. 1 and 2. The tender of the petitioner was accepted and letters of acceptance, agreements were issued executed between the parties dated 4.10.1989, 31.12.93 and february, 1994. All agreements were signed by the Chief Electrical Engineer (Const.), Northern Railway, Tilak Bridge, New Delhi. As per the said contract agreements, it was agreed that the parties to be governed by the general conditions and electrical special conditions of the contract of the Northern Railway as applicable on the relevant date, inter alias providing settlement of dispute between the parties by way of Arbitration Clause being Clause No. 1.2.54 of the electrical works special tender conditions of all the three works. According to the petitioner, the work could not be executed within the stipulated period and was prolonged till 30th September, 92, 23rd August, 94 and 19th December, 1995 respectively. During the pendency of this work other tender of the petitioner was not accepted and for the work done by the petitioner, the respondent did not make the payment. According to the petitioner,

the respondents were liable to pay a sum of Rs. 4,89,448.67P, Rs. 5,49,924.47P and Rs. 1.82,084.05P respectively. The petitioner had submitted a consolidated statement and vide letter dated 8.11.02 and 30.11.02 the petitioner was asked by the respondents to submit separate claims in respect of all the three works to which the petitioner sent a detailed reply and he had prayed for appointment of an Arbitrator vide legal notice dated 20th October, 2002. Despite furnishing all details of claim and serving the legal notice, the respondents did not appoint an Arbitrator in accordance with the arbitration clause. The claims have been as under:

1. Work done but not paid Rs. 60,53,267/-
2. Amount payable on account of value of materials supplied by the contractor Rs. 12,21,457.19P.
3. Amount withheld on account of various earnest monies against various tenders works due to non finalization of the bills/contracts of the works in question Rs. 4,00,000/-
4. Loss suffered due to delay in completion and taking over the work done Rs. 22,21,372.18P. 5. Presuit, pendente lite and future interest in the above amounts from due dates till the date of payment 18% per annum. 6. Costs of Arbitration Proceedings.

2. The respondents failed to make the payment as well as appointment of an Arbitrator in accordance with arbitration clause. The petitioner was compelled to file the present petition. The respondents filed a detailed reply taking up various objections as to maintainability of the claims as well as the fact that the petitioner had not complied with the terms of the arbitration clause. The main emphasis is that the firm had submitted a legal notice which was combined notice for all the claims arising from all the contracts and the respondents had written various letters to them including letters dated 8.11.02, 30.11.02, 24.11.03, 29.10.03 to submit their individual claims but no such steps were taken by the petitioner, thus, the respondents were not able to appoint an Arbitrator. On the contrary vide their letter dated 21st September, 2003 they refuse to submit independent claim thus resulting in complete impediment in the way of the petitioner to make appointment of the Arbitrator in terms of the arbitration clause between the parties.

3. During the course of the arguments, the learned Counsel appearing for the respondent submitted that despite the above conduct of the petitioner and to show their bonafides they are still willing to appoint an Arbitrator even a sole Arbitrator but out of the panel of the department which has even been given in Court. Though the Arbitration clause does not contemplate a sole Arbitrator and the respondents do not admit any error on their part, still the arbitration clause can always be varied by the consent of the parties. The panel of arbitrators given to the counsel appearing for the petitioner, the petitioner has agreed to the appointment of Mr. Atul Kumar, CEE, Baroda House, New Delhi as sole Arbitrator.

The parties have agreed for the appointment of the sole Arbitrator. It would be more desirable to appoint a sole Arbitrator to decide the disputes between the parties. In the circumstances of the case, it cannot be said that the respondents have absolutely lost their right to enforce the arbitration clause and the petitioner cannot take complete advantage of the judgment of the Supreme Court in the case of Datar Switchgears Ltd. v. Tata Finance Ltd and Anr.. The controversy in any case no longer subsist in view of agreement between the parties. For the reasons afore-stated, this petition is disposed of with the direction to the respondents to nominate and appoint Sh Atul Kumar, CEE, Baroda House, New Delhi as sole Arbitrator as agreed between the counsel appearing for the parties. The said arbitrator shall enter upon the reference and complete the arbitration proceedings as expeditiously as possible.

The parties are left to bear their own cost.