
(2023) 03 DEL CK 0111

In the Delhi High Court

Case No : Arbitration Petition No. 1069 Of 2022

Soril Infra Resources Ltd

APPELLANT

Vs

Aishwarya Business Corporation Pvt. Ltd. & Ors.

RESPONDENT

Date of Decision : 02-03-2023

Acts Referred:

Citation : (2023) 03 DEL CK 0111

Hon'ble Judges : Chandra Dhari Singh, J

Bench : Single Bench

Advocate : Akshay Ringe, Megha Mukerjee, Singh Nishant Sanjay Kumar, Vivek K. Tripathi

Final Decision : Disposed Of

Judgement

Chandra Dhari Singh, J

I.A. 14755/2022 (Delay)

1. This is an application under Section 151 of the Code of Civil Procedure, 1908 for condonation of delay in re-filing the instant petition.

2. For the reason stated in the application, the delay of 70 days in re-filing the instant petition is condoned.

3. The application is disposed of.

I.A. 4194/202 (u/S 151 of CPC)

1. By way of this application under Section 151 of the Code of Civil Procedure, 1908, read with Section 23 of the Companies Act, 1956, the petitioner seeks the following reliefs:-

"(a) Allow the present application and direct the change in the name of the Petitioner from 'SORIL Infra Resources Ltd.' to 'Indiabulls Enterprises Ltd.;

(b) take on record the amended Memo of Parties..."

2. For the reason stated in the application, the same is allowed and the amended Memo of Parties filed alongwith the application is taken on record.
3. Accordingly, the application stands disposed of.

ARB.P. 1069/2022

1. The instant petition under Section 11 of the Arbitration and Conciliation Act, 1996 has been filed on behalf of the Petitioner seeking the following relief:-

"A) Appoint an Arbitrator and refer the aforementioned dispute to the Ld. Arbitrator for adjudication...

2. Learned counsel for the petitioner submitted that the petitioner is a Company incorporated under the provisions of the Companies Act, 1956, and is involved in the business of inter alia equipment renting management and maintenance, and for the purposes of signing, verifying, and presenting this petition, Mr. Narender Kumar, having office address Indiabulls House, Plot No. 448-451, Udyog Vihar, Phase-V, Sector 19, Gurugram Haryana has been authorized vide Board Resolution dated 27th May 2019.

3. It is submitted that the respondents had approached the petitioner for the supply of machinery/equipment at the site of the respondent no. 1 situated at C/o JSW Steel Ltd. Vijaynagar, PO- Vidyanagar, Village, Toranagallu, Bellary-583275, Karnataka on the terms and conditions as stated in the work order.

4. Learned counsel for the petitioner submitted that the Agreement dated 8th July 2019 was executed under which the petitioner agreed to rent out the heavy-duty equipment to the respondent in return for a rental amount for the equipment.

5. Learned counsel for the petitioner submitted that some work orders in terms of the Agreement were executed between the parties under which a sum of INR 14,67,368.50 was payable to the petitioner as per Clause 8 of the said Agreement.

6. Learned counsel for the petitioner further submitted that the bill amounting to INR 48,47,145 was raised by the petitioner between the period of 10th June 2019 and 31st March 2020 which were not cleared by the respondent. Further, on being aggrieved by such non-payments, the petitioners issued legal notices dated 21st October 2021 and 1st December 2021 to the respondents after which respondent no. 1 made a payment of INR 49,000 in October 2021 and INR 49,000 in December 2021 after deducting TDS.

7. Learned counsel for the petitioner submitted that despite various attempts made by the petitioner, no solution was suggested by the respondents and the respondents were avoiding communications with mala fide intentions.

8. It is submitted that notice dated 7th April 2022 under Section 21 of the Arbitration and Conciliation Act, 1996 was sent to the respondents to fulfil their

obligations under the Collaboration Agreement or compensate the Petitioner. It is further submitted that the petitioner also conveyed that they had nominated an Arbitrator in the said Notice.

9. Learned counsel for the petitioner submitted that no reply was received from the respondents and that the respondents intend to evade the payments.

10. Learned counsel for the petitioner submitted that as per the Clause 17 of the Agreement dated 8th May 2019, in case of any dispute, the said dispute may be referred to Arbitration.

11. Per Contra, learned counsel for the respondents vehemently opposed the averments made by learned counsel for the petitioner, however, it is duly accepted that the dispute in question is arbitrable in nature.

12. Learned counsel for the respondents submitted that the respondent is a small company and the alleged amount of the dispute is INR 11,36,842 (Eleven Lakh Thirty-six thousand eight thousand forty-two). It is further submitted that the Agreement was executed in Mumbai, and both companies have their offices in Mumbai.

13. It is submitted that the notice for invocation of Arbitration was sent by the petitioner to the Mumbai address of the respondents. So, considering this, learned counsel for the respondents submitted that respondents no. 1 and 2 have suggested initiating the Arbitration Proceedings in Mumbai.

14. Heard learned counsel for the parties and perused the record.

15. In the light of the arguments advanced and the contentions raised in the pleadings, this Court is of the view that the disputes arising out of the Agreement dated 8th May 2019 between the parties are arbitrable in nature. In terms of Clause 17 the parties may seek recourse of Arbitration for resolution of their disputes. The Agreement clearly encompasses an Arbitration Clause, in which Clause 17.3 specifies that the place of Arbitration shall be in New Delhi.

16. During the arguments, learned counsel for the respondents conceded and consented to the appointment of an Arbitrator in New Delhi. Hence, the following Order:

ORDER

(i) Ms. Radhika Bishwajit Dubey, Advocate is appointed as a sole arbitrator to adjudicate the disputes between the parties which have arisen under the Agreement dated 8th May 2019;

(ii) The learned sole arbitrator, before entering the arbitration reference, shall ensure compliance of Section 12(1) of the Arbitration and Conciliation Act, 1996;

(iii) The learned sole arbitrator shall be paid fees as prescribed under the Fourth Schedule of the Arbitration and Conciliation Act, 1996;

(iv) At the first instance, the parties shall appear before the learned sole arbitrator within 10 days from today on a date that may be mutually fixed by the learned sole arbitrator;

(v) All contentions of the parties are expressly kept open;

(vi) A copy of the order be forwarded to the learned sole arbitrator at the following address:

Radhika Bishwajit Dubey, Advocate

F-18, 3rd floor, Geetanjali Enclave, New Delhi 110017.

Ph. no. +91 98109 82927

E-mail: radhika.arora21@gmail.com

17. The petition is disposed of in the aforesaid terms along with pending applications, if any.

18. The order be uploaded on the website forthwith.