
(2021) 09 DEL CK 0049

In the Delhi High Court

Case No : Arbitration Petition No. 799 Of 2021

Technocrats Advisory Services Private Limited

APPELLANT

Vs

Union Of India Through The Ministry Of Road Transport And
Highways

RESPONDENT

Date of Decision : 13-09-2021

Acts Referred:

Arbitration And Conciliation Act, 1996 — Section 11(6), 12

Citation : (2021) 09 DEL CK 0049

Hon'ble Judges : Suresh Kumar Kait, J

Bench : Single Bench

Advocate : Mani Gupta, Ruchir Mishra

Final Decision : Disposed Of

Judgement

Suresh Kumar Kait, J

1. Present petition has been preferred under the provisions of Section 11 (6) of Arbitration and Conciliation Act, 1996 seeking appointment of sole Arbitrator.

2. Petitioner-company stated to be incorporated under the provisions of Companies Act, is engaged in the business of consultancy in the area of road, highways, expressways, bridges, flyovers, tunnels, railway infrastructure, tramways, metro and rapid rail system, canals, dams, irrigation systems and projects, drinking water, water storage reservoirs, water supply, sewerage & sanitations power generation including solar energy, transmission of powers, hotels, buildings including public buildings etc. Respondent- Ministry of Road Transport, Highways and Shipping of the Union of India is entrusted with the task of Central Ministries/Department, State Governments/UT Administrations, organisations and individuals, policies for Road Transport, National Highways and Transport Research to increase the mobility and efficiency of the road transport system in the country.

3. According to petitioner, the respondent awarded the contract for "Consultancy

Services for Authority's Engineer for supervision of NH(O) Works in the State of Bihar (Package No.8) on EPC" to MC Consulting Engineers Private Limited and entered into a Consultancy Services Agreement dated 03.12.2014 in respect of Consultancy Services for Authority's Engineer for supervision of NH(O) Works in the State of Bihar (Package No.8) on EPC. The role of the selected consultant was to act as the Authority's Engineer in EPC agreements entered into with road-developers for the relevant state.

4. Petitioner further avers that by way of a scheme of demerger cum arrangement, consultancy division relating to roads, highways and bridges of MC Consulting stood vested into petitioner-Company. Thereafter, petitioner and respondent entered into a substituted agreement dated 10.02.2017, whereunder petitioner was substituted for MC Consulting and it continued to performance the services.

5. Thereafter, during the execution of the Consultancy Contract some disputes and differences arose between the parties. Petitioner claims that the mandate of the petitioner was to render consultancy services to supervise the projects sanctioned by the respondent for the financial year 2014-15 and total 19 projects were entrusted by the respondent to the petitioner for supervision. Further claimed that in terms of Clause 2.4 of Special Conditions of the consultancy services contract, the time period of construction of all contracts was 24 months, however, maintenance period was raised by respondent to 48 months (04 years).

6. Petitioner has averred that besides the delay in starting construction of 18 projects, there was delay in completion of 10 projects and thereby, petitioner suffered huge losses, for which respondent refused to pay extra consultancy fee. Also respondent is alleged to have made unauthorized deductions from remunerations of Team Leader and Deputy Team Leader; refused to refix their remunerations after 02 years and further refused to pay the petitioner the due consultancy fee on price adjustment and maintenance cost paid to civil work contractors.

7. It is further claimed by petitioner that vide letter dated 05.11.2019, petitioner requested the respondent to amicably settle the disputes. Further, vide letter dated 27.11.2019 petitioner requested the respondent for adjudication of the disputes through Arbitrator. Respondent vide letter dated 16.12.2019 assured the petitioner for an amicable settlement, but did not take any further action. Thereafter, vide letter dated 28.05.2021 petitioner informed the respondent that upon its failure to respond to petitioner's request to amicably settle the disputes, in terms of Clause 8.2.1 (b) of Special Conditions of the Contract, petitioner appointed its nominee Arbitrator and requested respondent to form a 03 members arbitration tribunal. Since respondent failed to nominate its Arbitrator to form a arbitration panel within 30 days from the date of receipt of letter dated 28.05.2021, having expired on 27.06.2021, petitioner vide letter dated 1.07.2021 approached the Secretary, Indian Council of Arbitration, for appointment of an Arbitrator.

8. Respondent vide its letter dated 19.07.2021 informed petitioner of appointment of Mr. V. Velayutham as its nominee Arbitrator and vide letter dated 24.07.2021 requested the Indian Council of Arbitration for condonation of delay in nominating its Arbitrator, for appointment of 03 members of arbitration panel.

9. According to petitioner, the said appointment of Mr. V. Velayutham as respondent's nominee Arbitrator, is contrary to the terms of Clause 8.2.1 (b) of Special Conditions of the Contract. Also submitted that upon failure of the respondent to appoint its nominee Arbitrator within 30 days from receipt of the request dated 28.05.2021, the disputes INTER SE parties have to be adjudicated by sole Arbitrator.

10. At the hearing, learned counsel for petitioner emphasized that appointment of a sole Arbitrator would be efficient both in costs as well as administratively.

11. The present petition is opposed by learned counsel appearing on behalf of respondent, however, existence of arbitration Clause 8.2 in the Agreement in question as well as procedure for appointment of Arbitrator in terms of Clause 8.2.4 of the Special Condition of the Contract is not disputed. Invocation of arbitration vide letter dated 28.05.2021 by the petitioner is also not disputed. Pertinently, respondent had failed to nominate its Arbitrator within stipulated period of 30 days pursuant to letter dated 19.07.2021.

12. Accordingly, Mr. Justice (Retd.) Madan B. Lokur, former Judge of Hon'ble Supreme Court (Mobile: 9868219007) is appointed the Sole Arbitrator to adjudicate the dispute between the parties.

13. The fee of the learned Arbitrator shall be governed by the Fourth Schedule of the Arbitration and Conciliation Act, 1996.

14. The learned Arbitrator shall ensure compliance of Section 12 of Arbitration and Conciliation Act, 1996 before commencing the arbitration.

15. A copy of this order be sent to the learned Arbitrator for information.

16. With aforesaid directions, these petitions and pending application, if any, are accordingly disposed of..