

(2023) 08 DEL CK 0158

In the Delhi High Court

Case No : Original Miscellaneous Petition (I) (COMM.) No. 199 Of 2023

TPF Getinsa Euroestudios, SL In Association With Segmental Consulting & Infrastructure Advisory (P) Ltd **APPELLANT**

Vs

National Highways Authority Of India (NHAI) Ministry Of Road Transport & Highways, Govt. Of India **RESPONDENT**

Date of Decision : 21-08-2023

Acts Referred:

Arbitration and Conciliation Act, 1996 — Section 9, 12(1), 17

Citation : (2023) 08 DEL CK 0158

Hon'ble Judges : Jyoti Singh, J

Bench : Single Bench

Advocate : Saurabh Kirpal, Aditya Vaibhav Singh, Manish K. Bishnoi, Prerana Sabharwal

Final Decision : Disposed Of

Judgement

Jyoti Singh, J

1. Present petition has been filed by the Petitioner under Section 9 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as the '1996 Act') seeking the following reliefs:

"a. grant ad-interim ex-parte stay of the operation of the impugned termination notice dated 17.05.2023;

b. pass an ad-interim direction against the Respondent Authority, restraining them from taking any coercive actions in furtherance of the impugned termination notice dated 17.05.2023;

c. pass directions directing the Respondent Authority to continue to act in accordance with the terms of the Contract Agreement dated 11.12.2019;

d. hold issuance of the impugned termination notice dated 17.05.2023 as null & void, being illegal and in the teeth of settled principles of law;

e. issue appropriate directions/orders directing the Respondent not to encash the Bank Guarantees submitted by the Petitioner;”

2. Disputes between the parties have arisen on account of termination of Contract Agreement dated 11.12.2019, whereby the Petitioner in association with Segmental Consulting and Infrastructure Advisory (P) Ltd. was appointed as NHAI’s Engineer for Rehabilitation and Upgradation of existing two-lane to four-lane standards from Duburi to Chandikhole Section (Km.338.376-Km.428.074) of NH-200 (New NH-53) in the State of Odisha under NHDP-III on EPC Mode (Pkg.-III) by NHAI. This petition was triggered by the termination notice dated 17.05.2023 and Petitioner seeks an interim relief staying the operation of the said notice.

3. During the course of hearing, parties have agreed that this Court may appoint the sole Arbitrator in accordance with the Dispute Resolution Mechanism between the parties incorporated in Clauses 2.9.6 (General Conditions of Contract) and 8.2.1 (Special Conditions of Contract) forming a part of the Contract Agreement dated 11.12.2019 and this petition be treated as a petition under Section 17 of the 1996 Act to be presented before the learned Arbitrator. Parties have further agreed that the sole Arbitrator be appointed from the list published by Society for Affordable Redressal of Disputes (‘SAROD’), copy of which has been handed over in Court by Mr. Bishnoi, in accordance with Clause 8.2.1. Mr. Kirpal, learned Senior Counsel for the Petitioner expresses an urgency in the matter since interim relief has been sought and prays that this petition be treated as an application under Section 17 of the 1996 Act and record of this case be transmitted to the learned Arbitrator.

4. In view of the agreement between the parties for appointment of a sole Arbitrator for adjudication of the disputes arising out of the Contract Agreement dated 11.12.2019, this Court finds no impediment in appointing the Arbitrator. Relevant Clauses pertaining to the Dispute Resolution Mechanism including arbitration are as follows:-

“2.9.6. Disputes about Events of Termination

If either Party disputes whether an event specified in paragraphs (a) through (e) of Clause GC 2.9.1 or in Clause GC 2.9.2 hereof has occurred, such Party may, within forty-five (45) days after receipt of notice of termination from the other Party, refer the matter to arbitration pursuant to Clause GC 8 hereof, and this Contract shall not be terminated on account of such event except in accordance with the terms of any resulting arbitral award.

xxxx xxxx xxxx xxxx

8.2.1 Selection of Arbitrators

Each dispute submitted by a Party to Arbitration shall be heard by a sole arbitrator. NHAI shall within 30 days propose names of five (5) Arbitrators from the list of Arbitrators maintained by SAROD (Society for Affordable Redressal of

Disputes) and Consultant shall within 30 days select one name from the list of five and the name so selected by the Consultant shall be the Sole Arbitrator for the matter in dispute. In case NHAH delays in providing the list of 5 names, President, SAROD will provide 5 names within 30 days of receipt of reference from aggrieved party in this regard. In case the Consultant fails in selecting one from the list of five, President, SAROD shall select one from the list of five provided by NHAH within 30 days of receipt of reference from aggrieved party in this regard.”

5. With the consent of the parties, the following directions are issued:-

(a) Justice Pradeep Nandrajog, Former Chief Justice of Bombay High Court (Mob. No. 9818000130) is appointed as a sole Arbitrator to adjudicate upon the disputes between the parties pertaining to and in respect of Contract Agreement dated 11.12.2019.

(b) Learned Arbitrator is requested to furnish a declaration in terms of Section 12(1) of the 1996 Act, prior to entering upon reference.

(c) Fees of the learned Arbitrator shall be regulated as per Fourth Schedule of the 1996 Act.

(d) Present petition will be treated as an application under Section 17 of the 1996 Act and with a view to expedite the hearing before the learned Arbitrator, Registry is directed to transmit the records of this petition to the office of the learned Arbitrator within ten days from today.

(e) Learned Arbitrator is requested to make an endeavour to consider the application under Section 17 of the 1996 Act as expeditiously as possible after entering upon reference.

6. It is made clear that this Court has not expressed any opinion on the merits of the case and it is open to the learned Arbitrator to decide the matter, in accordance with law and the facts and circumstances of the case, including the application under Section 17 of the 1996 Act.

7. Court appreciates the efforts put in by learned Senior Counsel and other counsels on record for the parties in bringing about an early closure to the present petition.

8. Petition stands disposed of with the aforesaid directions.