

Court No. - 5

Case :- CIVIL MISC. ARBITRATION APPLICATION No. - 94 of 2023

Applicant :- Blacklead Infratech Pvt. Ltd. Thru Sh. Shreshth Toteja

Opposite Party :- Ekana Sportz City Pvt. Ltd. Thru. M.D. Uday Sinha

Counsel for Applicant :- Ankit Singh

Counsel for Opposite Party :- Ritesh Kumar Srivastava,Lakshyadeep Srivastava

Hon'ble Rajnish Kumar,J.

Heard.

This Court passed the following order on 19.03.2024:-

"Heard Sri Varun Shankar,Advocate holding brief of Sri Ankit Singh, learned counsel for the applicant and Sri Ritesh Kumar Srivastava,learned counsel for the respondent.

This application under Section 11(6) of Arbitration and Conciliation Act 1996 has been filed seeking appointment of arbitrator for resolution of the disputes and differences between the parties, which has arisen in terms of the Work Order dated 05.11.2020 containing arbitration clause.

This Court had passed the following order on 20.12.2023:-

"Heard Shri Varun Shanker holding brief of Shri Ankit Singh, learned counsel for the petitioner.

The instant petition has been preferred under Section 11(6) of the Arbitration and Conciliation Act, 1996 for appointment of a sole Arbitrator.

The submission of the learned counsel for the petitioner is that a work order was issued by the respondent dated 05.11.2020 and the said work order contained terms of conditions including an arbitration clause. It was provided that in case of any dispute or difference which may arise between the parties, the same be resolved through an arbitrator. It also provided that the Director of the respondent would be the sole arbitrator whose decision shall be final and binding.

The submission is that in terms of the provisions contained in Section 12(5) read with Schedule-V & VII of the Arbitration and Conciliation Act, 1996 duly amended in the year 2015, the respondent Director could not act as an arbitrator nor he could nominate any arbitrator of his behalf to resolve the disputes.

It is further pointed out that in terms of the notice dated 28.08.2023, the respondent was required to participate in an early constitution of the arbitral tribunal, however, despite the service of the said notice, there is no response.

The matter requires consideration.

Let notice be issued to the respondent returnable at an early date.

Learned counsel for the petitioner shall take steps within a week from today.

List this matter on 29.01.2024."

Learned counsel for the applicant submits that in view of the dispute in regard to non-payment of the dues under the Work Order dated 05.11.2020 by the respondents, the matter may be referred to an arbitrator. He relies on Vidya Drolia and others versus Durga Trading Corporation;(2021) 2 SCC 1 and the order dated 22.10.2021 passed in Arbitration Petition No.358 of 2021(Ashoka Udyog versus Managing Director National Agricultural Cooperative Marketing & Ors.) by the High Court of Delhi. Per contra, learned counsel for the respondents does not dispute the issuance of Work Order dated 05.11.2020 containing provision for arbitration under Clause 19 of the Agreement, in case of any dispute. However, he submits that some of the claims raised by the applicant in his notice are not pertaining to the aforesaid Work Order, which are in regard to the Drum Mix Plant and RMC Plant because there was no contract in regard to the same, therefore they are not referable for arbitration. He further submits that any claim in regard to the machinery also prior to 05.11.2020 is not covered under the Agreement which has been claimed by the applicant and for the remaining, he fairly, submits that the matter may be referred to the arbitrator appointed by this Court for adjudication. He relies on DLF Home Developers Limited versus Rajapura Homes Pvt. Ltd. and Another;(2021) 16 SCC 743, Magic Eye Developers Private Limited versus Green Edge Infrastructure Private Limited and others;(2023) 8 SCC 50 and the judgment and order dated 15.03.2023 passed by the High Court of Delhi in Arbitration petition No.283 of 2023(GTM Builders and Promoters Private Limited versus Sneh Development Private Limited).

Learned counsel for the applicant does not dispute the contention of learned counsel for the respondent that the claims in regard to Drum Mix Plant and RMC Plant are not covered under the Agreement, therefore, he submits that the matter may be referred for arbitration only in regard to the claims, which are covered under the Work Order dated 05.11.2020. However, he submits that claims in regard to which the Work Order was issued, claims prior to the issuance of the Work Order are covered under the Agreement as per the Arbitration Clause itself. Thus, he submits that the matter may be referred to an Arbitrator to decide the dispute only in terms of the Arbitration Clause 19.

Learned counsel for the respondent does not dispute the same. However, he submits that it may be kept open to be decided by the arbitrator appointed by this Court as to whether any dispute in regard to any claim before the Work Order is arbitrable or not under the agreement.

Having considered the submissions of learned counsel for the parties and gone through the records, this Court finds that admittedly the Work Order dated 05.11.2020 was issued for providing earth moving machineries and equipment at Ekana International Cricket Stadium, Lucknow. The details of works have been given in Annexure No.1. Clause 19 of the Work Order dated 05.11.2020 provides for arbitration, which is extracted hereinbelow:

"If any dispute difference or controversy shall at any time arise between

the contractor on the one hand and the Purchaser on the other hand connected with or arising out of the contract, whether before or during the progress or after the completion of the contract, and could not be resolved between both the parties, such difference or dispute shall be referred for Arbitration. The Director, Ekana Sportz City Private Limited, Lucknow will be the sole arbitrator whose decision shall be final and binding. the arbitrator from time to time, with consent of the parties, may enlarge the time for making and publishing the award. Upon every or any such reference the costs of an incidental to the reference and award respectively shall be at the discretion of the arbitrator who shall be competent to determine the amount thereof. In general each party will bear its own expenses during arbitration. The venue of such arbitration and proceedings will be Lucknow only."

The aforesaid clause provides that if any dispute difference or controversy shall at any time arise between the parties in connection with or arising out of the contract, whether before or during the progress or after the completion of the contract and could not be resolved between both the parties, the matter is to be referred to the arbitrator. The Director, Ekana Sportz City Private Limited is the sole arbitrator under the arbitration clause. However, there is no dispute among learned counsel for the parties that this Court may refer the matter to an independent arbitrator in view of the law laid down by the Hon'ble Supreme Court. Thus, whether the claims before issuance of the Work Order are covered or not are to be considered in terms of the Arbitration Clause by the arbitrator himself. However, it is not in dispute that there are some disputes regarding payment in terms of the Work Order and the same are referable to an independent arbitrator.

In view of above, this Court proposes the name of Hon'ble Mr. Justice Brijesh Kumar Srivastava-II(Former Judge of this Court), resident of B-5 Alokpuri, Rabindra Palli, Faizabad Road, Lucknow, Contact No.9415042400 as Arbitrator to settle the dispute between the parties.

Let the consent of Hon'ble Mr. Justice Brijesh Kumar Srivastava-II(Former Judge of this Court) be obtained by the office in terms of the provisions contained in Section 11(8) read with Section 12(1) of the Arbitration and Conciliation Act, 1995 by sending a letter along with copy of this application to him, which shall be provided by the applicant within a week.

List this case after receipt of consent of the proposed arbitrator."

In pursuance of the aforesaid order, Hon'ble Mr. Justice Brijesh Kumar Srivastava-II(Former Judge of this Court) has furnished the disclosure and accorded his consent in accordance with law to be an Arbitrator vide letter dated 01.04.2024.

In view of above Hon'ble Mr. Justice Brijesh Kumar Srivastava-II(Former Judge of this Court), resident of B-5 Alokpuri, Rabindra Palli, Faizabad Road, Lucknow, Contact No.9415042400 is appointed as an Arbitrator to arbitrate with regard to the dispute between the parties herein.

The application is **disposed of** accordingly.

Office is directed to communicate a copy of this order to Hon'ble Mr. Justice Brijesh Kumar Srivastava-II(Former Judge of this Court) forthwith.

Order Date :- 10.4.2024
Akanksha