

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
% **Date of order : 6th March, 2023**
+ ARB.P. 1309/2022

ARVIND TECHNO GLOBE JV Petitioner
Through: Mr.Rahul Malhotra and Ms.Anchal
Tiwari, Advocates

versus

DELHI METRO RAIL CORPORATION LTD Respondent
Through: Mr.Deepanjay Dutta, Advocate

CORAM:
HON'BLE MR. JUSTICE CHANDRA DHARI SINGH

ORDER

CHANDRA DHARI SINGH, J (Oral)

1. The present petition has been filed on behalf of the petitioner under section 11 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as “the Act”) seeking appointment of sole arbitrator for adjudication of disputes between the parties arising *qua* the Contract Agreement dated 22nd July, 2013.
2. Learned counsel appearing on behalf of the petitioner submitted that the petitioner, M/s Arvind Techno Globe (JV), is a partnership between M/s Arvind Techno Engineers Pvt. Ltd. and M/s Globe Civil Projects Pvt. Ltd., with its offices in New Delhi, India (A-22, III Floor, Green Park Main, Aurobindo Marg, New Delhi-110016).
3. It is submitted on behalf of the petitioner that the respondent, Delhi Metro Rail Corporation Limited, is a joint venture between the

Governments of India and Delhi. It is governed administratively by the Ministry of Urban Development, which has its headquarters at 25, Ashoka Road, next to the Patel Chowk Metro Station in New Delhi, India.

4. It has been submitted on behalf of the petitioner that the respondent vide letter no. DMRC/20/III-091/20 13 dated 15th May, 2013 awarded the work for "Part Design and Construction of Elevated Viaduct and two elevated station viz Johri Enclave and Shiv Vihar stations including Architectural finishing, water supply, sanitary installation and drainage works of stations from chainage 55121.184 m to 57357.623 m of line 7 Mukundpur-Yamuna Vihar Corridor of Phase -III Delhi MTRS in Delhi and Uttar Pradesh" to the petitioner.

5. It is further submitted on behalf of the petitioner that the agreed upon deadline for the completion of the work was 19th May, 2015, but due to the respondent's error and a variety of excuses for the delay, including deferred heads of work, the petitioner was unable to finish the work by the deadline. The project was delayed by 27 months, and the petitioner finished it on 30th October, 2018. The respondent granted the performance certificate for the same on 25th February, 2020.

6. It has been submitted that pursuant to the completion of work, the petitioner vide its letter dated 2nd June, 2022 raised its claim to the tune of Rs. 20,64,14,428/- under several heads. The said letter was addressed to the Chief Project Manager-4 of the respondent. It is further submitted that the respondent failed to release the said claim amount in favour of petitioner.

7. It has been submitted on behalf of the petitioner that in response to

the petitioner's letter dated 2nd June, 2021, the respondent denied the petitioner's claims vide letter dated 14th June, 2021, arguing that the "notice of dispute" should have been submitted within 28 days of the date the performance certificate was issued in accordance with Clause 17.4 of the GCC.

8. It is submitted on behalf of the petitioner that the matter was proposed to be settled by way of conciliation. In light of the same, the petitioner's request was accepted by the respondent vide letter dated 17th July, 2021 in accordance with clause 17.7 of the GCC. The conciliator entered into reference of conciliation proceedings vide letter dated 18th August, 2021 and called upon the Chief Project Manager of the parties to submit their written statement elaborating their disputes. It is further submitted that since, the said conciliation proceedings were not concluded within a reasonable time thus, the petitioner vide letter dated 2nd June, 2021 requested to terminate the said proceedings.

9. It has been submitted on behalf of the petitioner that since the efforts to resolve the dispute amicably have failed, the petitioner was constrained to invoke the arbitration clause as provided under the GCC, i.e., Clause 17.9.

10. It has been submitted on behalf of the petitioner that in complete contradiction to the law settled by the Hon'ble Supreme Court in its judgment titled as *Voestalpine Schienen GmbH vs. Delhi Metro Rail Corporation Ltd.* reported as (2017) 4 SCC 665, the respondent suggested 5 names from its panel in order to adjudicate the disputes between the parties.

11. In view of the submissions made above, it has been submitted that

it is clear that the respondent refused to appoint an independent arbitral tribunal of arbitrators pursuant to Clause 17.9 of GCC in accordance with Section 12(5) of the amended Act, despite acknowledging that disputes have developed between the parties as a result of non-payment of claims. Subsequently, vide letter dated 30th October, 2021, the petitioner had invoked the arbitration clause as provided in Clause 17.9 of the GCC.

12. *Per Contra*, the learned counsel appearing on behalf of the respondent submitted that the instant application is not maintainable on ground of being extremely misguided, malicious, and deceptive attempt to circumvent the due process and procedure of law.

13. It is further submitted that the GCC, which are a component of the Contract Agreement dated 22nd July, 2013 between the parties herein, contain a categorical clause that makes it clear that the claim presented by the petitioner cannot be upheld. It is the petitioner's accepted position that on 25th February, 2020, the respondent gave the petitioner a performance certificate. Furthermore, it is true that in a letter dated 2nd June, 2021, the petitioner who is in possession of the performance certificate from the respondent first asserted its rights. In this regard, it is humbly argued that Clause 17.4 of the GCC clearly states that in order for a disagreement to have arisen between the parties hereunder, one party must provide the other party with a notice of dispute within 28 days from the issuance of the performance certificate.

14. It is further submitted that the petitioner failed to give the 'notice of dispute' within the allotted time frame of 28 days following the engineer's issuance of the performance certificate. As a result, the petitioner has forfeited its right to file any claim or dispute against the respondent in

this case.

15. It has been submitted on behalf of the respondent that the petitioner invoked the arbitration clause included in Clause 17.9 of the GCC by sending the respondent a letter on 30th October, 2021. Moreover, in accordance with the provisions of the arbitration agreement and after receiving the petitioner's notice of invocation, the respondent sent a letter on 23rd November, 2021, outlining a panel of 5 arbitrators and asking the petitioner to choose an arbitrator from that panel.

16. It has been submitted that none of the panel's arbitrators are affiliated with the respondent organisation. In actuality, the panel's arbitrators are either National High-Speed Rail Corporation Limited (NHSRCL) or the Indian Railway Service of Engineers (IRSE).

17. It has been submitted on behalf of the petitioner that Section 12(5) was added after the Act was amended in 2015 to invalidate the appointment of any person whose relationship with the parties, counsel, or the dispute's subject falls under any of the categories listed in the Act's Seventh Schedule. The aforementioned rule was added with the intention of obscuring and eliminating any potential bias concerns and maintaining the impartiality and independence of the arbitral process.

18. It is submitted on behalf of the petitioner that the panel of arbitrators chosen by the respondent in accordance with the arbitration clause found in the GCC does not fall under the definition of an ineligible person as set forth in Section 12(5) of the Act, as none of the members of the said panel are related to the respondent or the dispute's subject. Thus, the petitioner's position that the arbitration provision had become illegal owing to statutory revisions is totally misguided.

19. It is submitted that a three judge bench of the Hon'ble Supreme Court was seized of an arbitration clause that provided that the arbitral tribunal shall consist of a panel of three retired railway officers not below the rank of captain in the case of *Central Organization for Railway Electrification v. ECI-SPIC-SMO-MCML JV* reported as (2020) 14SCC 712. The Contractor was required to suggest to the General Manager at least two names from the panel for appointment as the Contractor's Nominee, and the General Manager was required to appoint at least one of them as the Contractor's Nominee. The Railways was required to send a panel of at least four names of retired railway officer(s) for this purpose. The General Manager was required to name the remaining arbitrators from the panel or from outside the panel at the same time.

20. In view of the foregoing submission, learned counsel appearing on behalf of the respondent submits that the petitioner was required to choose its nominee from the panel of arbitrators provided to it by the respondent by way of the letter dated 23rd November, 2021 because the said individuals possess the necessary eligibility to decide the dispute as raised by the parties. This was true even though there was no reason to doubt the impartiality and independence of the proposed arbitrators.

21. Heard the learned counsel appearing on behalf of the parties and perused the record.

22. It is evident that the dispute before this Court is limited to the extent *qua* the appointment of an independent arbitrator to adjudicate the disagreements arising between the parties *qua* the Contract Agreement dated 22nd July, 2013.

23. The learned counsel appearing on behalf of the respondent while

opposing the averments made in the instant petition has fairly conceded that the dispute between the parties is arbitral in nature.

24. As agreed on behalf of the parties, this Court finds it appropriate to refer the disagreements arising between the parties with respect to the Contract Agreement dated 22nd July, 2013 to an independent sole arbitrator for its redressal. Hence, the following order:

ORDER

- (i) Justice N.V. Ramana, Former Chief Justice of India is appointed as a sole arbitrator to adjudicate the disputes between the parties which have arisen under the Contract Agreement dated 22nd July, 2013;
- (ii) The learned sole arbitrator, before entering the arbitration reference, shall ensure the 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 Delhi International Arbitration Centre (DIAC) (Administrative Cost and Arbitrators Fees) Rules, 2018 as amended vide notification dated 15th November, 2022;
- (iv) At the first instance, the parties shall appear before the learned sole arbitrator within 10 days from today on a date which may be mutually fixed by the learned sole arbitrator; and
- (v) All contentions of the parties are expressly kept open.

25. A copy of the order be forwarded to the learned sole arbitrator on the following address:

Justice NV Ramana, Former Chief Justice of India
Bungalow No.2, Tughlak Road
New Delhi-110011.
Mobile:-+91-9818000162
Email:- pstonvr@gmail.com

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

MARCH 6, 2023
SV/UG

CHANDRA DHARI SINGH, J

[Click here to check corrigendum, if any](#)

नित्यमेव जयते