

Survi Projects Vs. Veda Research Lab Pvt. Ltd.

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Court : Delhi

Decided On : Dec-12-2002

Reported in : 2003(1)ARBLR347(Delhi); 102(2003)DLT690

Judge : S.K. Agarwal, J.

Acts : [Arbitration and Conciliation Act, 1996](#) - Sections 11, 11(5) and 11(6)

Appeal No. : AA. No. 205/2001

Appellant : Survi Projects

Respondent : Veda Research Lab Pvt. Ltd.

Advocate for Def. : Anil Sharma, Adv.

Advocate for Pet/Ap. : George Thomas, Adv

Judgement :

S.K. Agarwal, J.

1. By this petition under Section 11(5) of the [Arbitration and Conciliation Act, 1996](#) (for short 'the Act'), petitioners have prayed for appointment of an independent Arbitrator to adjudicate disputes between the parties.

2. It is pleaded that applicant-M/s. Survi Projects entered into a contract with the respondent-M/s. Veda Research Lab Pvt. Ltd. on 31.1.1998 at Delhi for the

construction of a factory building at Plot No. D-97-98, 105-106, Greater Noida for the respondent; the stipulated period for completion of the contract was seven months; however, due to various alleged breaches committed by the respondent in the contract, the work could not be completed within the original stipulated time of completion of the contract. The respondent took possession of the building in October, 1999 and using the same since then. It is pleaded that even though the possession of the building was taken by the respondent as early on October, 1999, but the final payment as well as various other claims of the petitioner were not settled. By letter dated 26.4.2001, petitioner called upon the respondent to settle and pay various amounts due to the petitioner, and the respondent failed to pay the claims. Under Clause 37, it was agreed that all dispute arising out of the contract are to be settled by arbitration. In accordance with the arbitration agreement, the petitioner first referred the disputes to the architect for his decision with copy of the respondent. On these pleadings the petitioner has prayed for appointment of the arbitrator. The respondent has filed the reply, opposing the application, inter alias pleading that the application for appointment of the arbitrator is not maintainable in as much as the applicant has not followed the procedure prescribed under Clause 37 of the Agreement. In terms of Clause 37 of the Agreement, in the event of respondent not agreeing or consenting in the appointment of the arbitrator suggested by the applicant, a panel of three arbitrators is required to be appointed to adjudicate upon the disputes between the parties to the agreement. The applicant ought to have taken recourse to the said procedure. The application as such is liable to be dismissed.

3. Law with regard to appointment of the arbitrator under Section 11 of the Act by the Chief Justice or his designate is well settled. Section does not contemplate a decision by the Chief Justice or his designate, on any controversy between the parties. The decision to nominate is not adjudicatory but is administrative. This Section does not contemplated even a response from other party. The only function of the Chief Justice or his designate under Section 11(6) is to fill the gap left by a party to the arbitration agreement. This is to enable the Arbitral Tribunal to be expeditiously constituted and the arbitration proceedings to commence. Reference in this regard may be made to the Apex Court's in *Konkan Railways Corporation Ltd. v. Rani Construction Pvt. Ltd.* 2002 (1) Scale 465 and *Konkan*

Railway Construction Corporation Ltd. v. Mehul Construction Co. : AIR 2000 SC2821 .

4. Learned counsel for parties after arguing the matter for some time agreed that since the matter required to be adjudicated is of technical nature, and as parties have failed upon to refer the disputes to a single arbitrator for arbitration, parties may be permitted to nominate one arbitrator each who should be fellow of the Indian Institute of Architect and some third independent arbitrator be appointed by the court for expeditious disposal of the claims or counter claims.

5. Accordingly, parties are directed to nominate their respective Arbitrator within two weeks. Mr. K.P. Verma, former District & Sessions Judge, Delhi, Flat No. 29, 'UTTARANCHAL', Plot No. 5, Patparganj, Delhi-110092 is hereby appointed as the third Arbitrator for the purpose of adjudicating upon the claims and counter-claims of the parties, along with two arbitrators one each nominated by the parties. The Arbitrator shall fix his own fee.

With above direction, petition stands disposed of. Copy of order be sent to the parties as well as to the Arbitrator.

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