

M/S Garg Builders Vs. Rites Ltd. and ors

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Court : Delhi

Decided On : Apr-17-2013

Judge : Manmohan Singh

Appellant : M/S Garg Builders

Respondent : Rites Ltd. and ors

Judgement :

* IN THE HIGH COURT OF DELHI AT NEW DELHI % Order delivered on: April 17, 2013 + Arb.P.No.100/2012 M/S GARG BUILDERS Through Petitioner Mr.Sanjay Bansal, Adv. versus RITES LTD & ORS Through Respondents Mr.Anil Seth, Adv. with Mr.M.K. Pathak & Mr.Manoj Kumar, Advs. for R-1 & R-3. Mr.Anil Grover, Adv. with Ms.Noopur Singhal, Adv. for R-2. CORAM: HON'BLE MR. JUSTICE MANMOHAN SINGH MANMOHAN SINGH, J.

(Oral) 1. The petitioner has filed the abovementioned petition under Section 11(6) of the Arbitration and Conciliation Act, 1996 for appointment of an arbitrator in terms of arbitration clause 25 of the agreement. It is also mentioned in the prayer clause that the retired Engineer of CPWD be appointed who may be directed to adjudicate and decide the dispute between the parties.

2. The case of the petitioner is that the petitioner had entered into an agreement with the respondent on 23 rd August, 2007 for the work of construction of office building for Gurgaon Gramin Bank at Sector-44, Gurgaon. The work was awarded to the petitioner vide letter of acceptance dated 31st July, 2007 for the aforesaid

work which was completed on 30 th June, 2009. The contention of the petitioner is that despite of the same, the respondent had not released the payments for the work done and also towards escalation and loss towards delay in the execution of work despite of various requests made by the petitioner to the respondents by virtue of many letters. According to the petitioner, the delay has happened on the part of the respondents who denied statement made in the petition rather it is stated that some of the work was still pending. As the payment was not released by the respondents to the petitioner, the petitioner invoked arbitration clause-25 of the agreement. The details of the claims are mentioned in para-14 of the petition.

3. Notice of this petition was issued. Mr.Anil Seth, Advocate appears on behalf of respondents No.1 & 3 and Mr.Anil Grover, Advocate appears on behalf of respondent No.2. The contention of Mr.Seth is that the respondent No.1 is not a party to the agreement, nor privity of the contract with the petitioner. Thus, the petition filed by the petitioner is not maintainable. The second submission of Mr.Seth is that the petitioner does not fulfill the procedure provided under the arbitration agreement. Even on that account the petition is not maintainable. It is also contended on behalf of respondent No.1 his client is not a necessary party to the petition as respondent No.1 is an agent of respondent No.2 who had merely acted for and on behalf of respondent No.2 and the petitioner is aware about this fact which also reflects in the agreement. Respondent No.3 is the appointing authority of the arbitrator as per agreement. In this regard, he has referred the clause 25(ii) of the agreement which reads as under:25(ii) Arb.P.No.100/2012 binding and conclusive in terms of Sub Para (i) all other claims which have earlier been referred to Accepting Authority as above on receipt of complete details of such claims with application to appoint an arbitrator within 120 days of completion of work or 120 days after receipt of information of preparation of final bill, but before signing the final bill shall be referred for adjudication through arbitration by a sole arbitrator appointed by the Accepting Authority. If the arbitrator so appointed is unable or unwilling to act or resigns his appointment or vacates his office due to any reason whatsoever, another sole arbitrator shall be appointed in the manner aforesaid. Such person shall be entitled to proceed with the reference from the stage at which it was left by his predecessor. xxxxx xxxxx xxxxx xxxxx It is also a term of the Contract that no person other than person appointed by such

Accepting Authority as aforesaid should act as Arbitrator and if for any reason that is not possible, the matter should not be referred to the Arbitration at all.

4. The submission of respondent No.2 is that respondent No.2 has admittedly not signed the agreement executed between the petitioner and respondent No.1. However, as far as the appointment of arbitrator is concerned, respondent No.2 has no objection. Liberty is sought by said respondent to raise its objections before the Arbitrator. After some hearing, Mr.Seth, learned counsel for respondents No.1, has not disputed the fact that it is for the Arbitrator to decide whether respondent No.1 is a necessary party or not but has not denied the fact that his client is a signatory to the agreement in question.

5. As regards the petitioner is concerned, after some arguments, the petitioner has no objection if the respondent No.3 (Appointing Authority) be given time to appoint the Arbitrator and such Arbitrator may adjudicate the disputes between the parties.

6. In view of the above said facts and circumstances, respondent No.3 is directed to appoint an Arbitrator within 30 days from today. It is open to all the parties to move the application with regard to the objections raised by them in their reply. The same would be decided in accordance with law and as per the agreement between the parties.

7. After some arguments all the parties, i.e. petitioner and respondents No.1 and 2 have raised no objection if the respondent No.3, who is the Appointing Authority, be given some time to appoint an Arbitrator who may adjudicate the disputes between the parties.

8. In view of the above, the respondent No.3 is granted thirty days time to appoint the Arbitrator to decide the disputes between the parties.

9. It is open to the respondent No.1 to raise all the objections mentioned in reply i.e. respondent No.1 is not a party to the arbitration agreement nor privity of contract is with the petitioner and no other person than the person appointed by the respondent no.3 can be appointed as the Arbitrator in terms of Clause 25 of the Contract and the petitioner has not fulfilled the procedure provided in the said

clause.

10. Similarly, respondent No.2 is at liberty to move an appropriate application to raise the objections before the Arbitrator that he is not a signatory to the agreement executed between the petitioner and the respondent No.1.

11. As agreed by the parties that the learned Arbitrator would consider the objections of the respondents No.1 and 2 in accordance with law and as per rules.

12. The petition is accordingly disposed of.

13. Copies of this order be given dasti to the learned counsels for the parties. A copy of this order be also communicated to respondent No.3. (MANMOHAN SINGH) JUDGE APRIL 17 2013

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