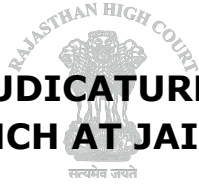




**HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR**



S.B. Arbitration Application No. 51/2023

M/s Shakti Foundation, Through Its Authorised Representative
Manish Binju S/o Satish Binju Aged 42 Yrs Having Office At 112-
A Shakti Nagar, Kota (Raj.)

----Petitioner

Versus

1. The Chairman, Rajasthan State Industrial Development And Investment Corporation, (Riico) Registered Office At Udyog Bhawan Tilak Marg Jaipur-302005 (Rajasthan.)
2. Managing Director, Rajasthan State Industrial Development And Investment Corporation (Riico) Registered Office At Udyog Bhawan, Tilak Marg, Jaipur-302005 (Rajasthan.)

----Respondents

For Petitioner(s) : Mr. Abhishek Bhardwaj
For Respondent(s) : Ms. Pooja Nuwal

HON'BLE MR. JUSTICE SUDESH BANSAL

Order

16/08/2024

1. This Arbitration Application under Section 11 of the Arbitration and Conciliation Act, 1996 (for short "A&C Act") filed by the applicant for appointment of an independent, impartial and neutral Arbitrator to adjudicate the dispute that has arisen because of cancellation of Industrial Plot No.IP-7 at Industrial Area Growth Center, Phase-II, Abu Road, District Sirohi by the RIICO vide letter dated 17.03.2021 and deducting a sum of around Rs.28 lakhs vide order dated 23.03.2021.
2. Heard counsel for both parties and perused the record.
3. Learned counsel for applicant contends that an Industrial Plot was allotted to the applicant by the RIICO for establishment of



Educational Institution and though applicant complied with terms and conditions of allotment, yet the allotment was cancelled by the RIICO vide letter dated 17.03.2021. Furthermore, vide order dated 23.03.2021, after cancellation of the allotment, out of deposited keenness money and cost of the land, i.e. amount of Rs.22,96,796/- + Rs.5,90,000/-, in total Rs.28,86,796/- has been deduced.

4. Learned counsel for the applicant contends that orders dated 17.03.2021 and 23.03.2021 have been passed without extending opportunity of hearing to the applicant and are illegal, hence, applicant served a legal notice dated 10.02.2023 invoking the arbitration clause to appoint the Arbitrator. Learned counsel submits that the arbitration clause as contended in the lease deed dated 30.08.2010 through which the plot in question was allotted to the petitioner, reads as under:-

“3(h) Every dispute, difference or questions touching or airing out or in respect of this Agreement or the subject matter thereof shall be referred to the sole arbitration of the Collector of the district wherein the leased plot is situated or any person appointed by him, the decision of such arbitrator shall be final and binding on the parties.”

5. Learned counsel for applicant contends that the legal notice dated 10.02.2023 was not responded by the respondents, hence, the present Arbitration Application has been filed seeking appointment of an independent, impartial and neutral Arbitrator, other than the Arbitrator named in the Arbitration clause in order to avoid the foul of Section 12(1) & (5) of the A&C Act.



6. *Per contra*, counsel appearing on behalf of respondents-RIICO vehemently opposed the Arbitration Application and contended that after allotment of plot, the applicant miserably failed to raise the construction of infrastructure of Educational Institution thereupon and thus, he committed breach of conditions of allotment, hence, his allotment was validly cancelled. Further, learned counsel for respondents submits that after cancellation of allotment of industrial plot and after due deductions, the remaining amount has been refunded by the RIICO, which has been accepted by the applicant without any protest. Therefore, learned counsel for respondent contends that virtually the applicant has consented to the cancellation of allotment as well as deductions, as such, in such backdrop, no dispute survives between the parties. The dispute sought to be raised to refer to arbitration is afterthought, hence, the arbitration application deserves to be dismissed.

7. Learned counsel contends that in alternative, in case, this Court deems it just and proper to refer the dispute to the Arbitration, as per clause 3(h) mentioned in the lease deed, the concerned Collector be appointed as Arbitrator.

8. Heard. Considered.

9. Having adverted to the rival pleadings of both the parties and the contentions made by respective counsel of both the parties, existence of an arbitration agreement as contained in Clause-3(h) of the lease deed dated 30.08.2010, extracted hereinabove, is not in dispute between the parties. Indisputably, lease deed dated 30.08.2010 was executed by RIICO in favour of



the applicant through which Industrial Plot No.IP-7 at Industrial Area Growth Centre, Phase-II, Abu Road, District Sirohi, was allotted to the applicant.

10. Further, this Court finds that a dispute has also been arisen between the parties in respect of cancellation of allotted plot of applicant by the RIICO vide order/letter dated 17.03.2021 as also in respect of making the deductions by the RIICO vide order dated 23.03.2021. Such dispute is arbitrable as per the arbitration agreement referred herein-above.

11. As far as contentions of learned counsel for the respondents that because the applicant has accepted the refunded amount by the RIICO without any protest and for this reason, the applicant is estopped to raise the dispute in respect of cancellation of his plot as well as against deductions made by RIICO is concerned, it may be observed that the respondent did not produce any document of applicant accepting the refunded amount by the applicant as full and final settlement, nor any other substantive material has been placed by the respondents, in support of such contention, thus, the contention is in aim and without support of any evidence.

12. In case of **Union of India Versus Parmar Construction Company: (2019) 15 SCC 682**, the Hon'ble Apex Court while relying upon its previous judgment in case of **National Insurance Co. Ltd. Versus Boghara Polyfab (P) Ltd.: (2009) 1 SCC 267**, held and observed that there cannot be rule of absolute kind of estoppel for not allowing to raise the dispute even after signing no claim/discharge certificate, but each case has to be looked into on its own facts and circumstances. Applying such





analogy on the facts and circumstances of the case in hand, this Court does not find any strong ground to hold that the applicant is estopped to raise the dispute, merely on the basis of receiving the balance amount refunded by RIICO. Therefore, such contention raised by and on behalf of respondents is hereby rejected.

13. Coming to the another objection of respondent that if the arbitrator is appointed, then only the concerned Collector can be appointed as arbitrator but this objection is also untenable in the eye of law. this Court is of considered opinion that it was open for the parties to appoint the concerned Collector as arbitrator in view of their inter-see understanding under the arbitration agreement. However, the parties remain failed to appoint the concerned Collector as arbitrator. In such eventuality, Section 10(2) of the A&C Act comes in play and this Court is not bound to appoint the concerned Collector only as arbitrator. Further, this Court is of the considered opinion that RIICO is although an an autonomous incorporated body, but is an undertaking of the Government of Rajasthan, therefore, instead of appointing the concerned Collector as Arbitrator, it is safe to appoint an independent, impartial and neutral arbitration Tribunal of a sole Arbitrator in order to avoid the foul of Section 12(1) and (5) of the A&C Act. Hence, law permits and in the facts of the present case, it is just and proper to appoint an independent, Arbitrator other than named Arbitrator.

14. In addition to the above, appointment of arbitrator is one of the important aspect in the process of adjudication of dispute through arbitration and therefore, it is imperative to appoint an



independent, impartial and neutral arbitrator, other than the arbitrator, who might have remote next concern or nexus with either of the party. On this ratio, legal position is well settled that this Court is not bound to agree on the name of the arbitrator, indicated in the arbitration agreement. This Court finds support to its view by two judgments delivered by the Apex Court in case of **TRF Ltd. Vs. Energo Engineering Projects Ltd. [(2017) 8 SCC 377]**, which has been followed in case of **Perkins Eastman Architects DPC Vs. HSCC (India) Ltd. [(2020) 20 SCC 760]**. In both the judgments, the Apex Court approved appointment of an independent and impartial Arbitrator other than named in the Arbitration Agreement.

15. As per provision of Section 11(6A) of the A&C Act, the High Court is required to examine the existence of Arbitration Agreement between parties for the purpose of referring the dispute for Arbitration. For ready reference the provision of Section 11(6A) of A&C Act is being reproduced hereunder:-

"(6A) The Supreme Court or, as the case may be, the High Court, while considering any application under sub-section (4) or sub-section (5) or sub-section (6), shall, notwithstanding any judgment, decree or order of any Court, confine to the examination of the existence of an arbitration agreement."

16. In a recent judgment dated 30.12.2023, delivered by the Seven Judges Bench of the Hon'ble Supreme Court in **Re: Interplay Between Arbitration Agreements Under The Arbitration and Conciliation Act 1996 and the Indian Stamps Act, 1989 [AIR 2024 SC 1]**, in para No.152 and 154, it has clearly been observed that the omission of Section 11(6A)



proposed by introducing Arbitration and Conciliation (Amendment) Act, 2019 (Act 33 of the 2019) has not been notified in the Official Gazette and therefore, the said provision continues to remain in full force. In this judgment, placing reliance on previous judgments of the Apex Court delivered in the cases of **Duro Felguera, S.A. Vs. Gangavaram Port Limited [(2017) 9 SCC 129]** and **Mayavati Trading Private Limited Vs. Pradyuat Deb Burman [(2019) 8 SCC 714]**, it has been held that the legislature confined the scope of reference under Section 11(6A) to the examination of existence of an arbitration agreement. It has been held that the referral Court only needs to consider one aspect to determine the existence of an arbitration agreement- whether underlying contract contains arbitration agreement which provides for arbitration pertaining to the dispute, which has arisen between parties to the agreement. Thus, this Court has to rely upon the provision of Section 11(6A) of the A&C Act, which is extracted hereinabove.

17. As a result of the aforesaid discussions, the present Arbitration Application deserves to be allowed and the Arbitration Tribunal of sole Arbitrator may be appointed to adjudicate the dispute between parties in accordance with provision of the A&C Act, 1996.

18. Hence, the present Arbitration Application succeeds and same is hereby allowed. This Court constitutes the Arbitration Tribunal of sole Arbitrator of *Mr. N.K. Purohit, Former District Judge, Address:- C-116, Savitry Path, Bapu Nagar, Jaipur; Mobile No.9413301980*, to adjudicate the dispute between parties in



accordance with the provisions of the Arbitration and Conciliation Act, 1996.

19. The Arbitration fee shall be payable in accordance with the provisions contained in the Manual of Procedure for Alternative Dispute Resolution, 2009 as amended by the Manual of Procedure for Alternative Resolution (Amendment), 2017 vide notification dated 23.03.2017 read with 4th Schedule appended to the Act of 1996.

20. The Registry is directed to intimate Arbitrator – Mr. N.K. Purohit, Former District Judge, for his approval.

21. Parties are at liberty to raise their respective objections before the Arbitrator, who is supposed to consider and decide the objections as well as the dispute between parties in accordance with law.

22. Since as per Section 29A of the Arbitration Act, 1996, the arbitration proceedings are required to be concluded within scheduled time as stipulated therein, it is expected that parties shall provide E-mail/ Contact Number/ Mobile Number of themselves as also of their authorized representatives/ lawyers, appearing on their behalf respectively, before the Arbitration Tribunal, in order to facilitate the Arbitrator to send information to the parties, whenever required. The information send by the Arbitrator, on such address/ E-mail/ cellphone of the parties/ their authorized representative lawyers, shall be treated as sufficient unless same is not changed.

23. As per arbitration agreement, the arbitration proceedings are to be commenced at Jaipur, hence, same may be commenced



accordingly or at the place, which is convenient to both parties as also of the Arbitrator either physically or through Video Conferencing. Both parties shall mark their presence before the Arbitrator on 10th September, 2024 or on any other date as informed by the Arbitrator to the parties or agreed between both parties with the consent of Arbitrator.

24. All pending application(s), if any, stand disposed of.

(SUDESH BANSAL),J

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