

GAHC010073512022



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : Arb.P./14/2022

DURGA KRISHNA STORE PVT LTD
A COMPANY INCORPORATED UNDER THE COMPANIES ACT, 1956 HAVING
ITS REGISTERED OFFICE AT HOUSE NO. 377, 2ND FLOOR, CLUB ROAD,
SILCHAR-788001, CACHAR, ASSAM

VERSUS

THE UNION OF INDIA AND 2 ORS
REPRESENTED BY THE GENERAL MANAGER, N.F. RAILWAY, MALIGAON,
GUWAHATI-781011.

2:THE CHIEF ENGINEER/CON-I
N.F. RAILWAY
MALIGAON
GUWAHATI-781011.

3:THE FA AND CAO/CON
N.F. RAILWAY
MALIGAON
GUWAHATI-781011

Advocate for the Petitioner : MR. R HUSSAIN

Advocate for the Respondent : ASSTT.S.G.I.

**BEFORE
HONOURABLE MR. JUSTICE KALYAN RAI SURANA**

ORDER

Date : 05.06.2024

Heard Mr. R. Hussain, learned counsel for the petitioner as well as Mr. S.K. Medhi, learned CGC, appearing for the respondents.

2. By filing this application under Section 11 of the Arbitration and Conciliation Act, 1996, the petitioner company has prayed for appointment of an arbitrator for adjudicating the dispute between the parties, which has arisen out of and/or under the Contract Agreement dated 27.08.2018. Bereft of details, it would suffice to mention for the purpose of this order that pursuant to a tender issued for the work in question, the bid submitted by the petitioner was accepted vide acceptance letter dated 11.01.2018. The tendered work was required to be completed within 18 months time. Thereafter, in respect of the said work, a contract agreement dated 27.08.2018, was executed between the petitioner and the concerned respondent authority, which contains arbitration clause. It is projected that the respondent authorities have issued a termination notice dated 02.12.2020, and the contract was terminated on or about 07.12.2020.

3. The petitioner had made monetary claim against the respondents by the letter dated 04.01.2021, and in response to the same, the respondent authorities by letter dated 25.02.2021, requested the petitioner to submit their consent for waiver under Section 12 (5) of the Arbitration and Conciliation Act 1996, so as to enable the respondent authorities to appoint an arbitrator from their own panel. The petitioner did not respond to the said request and therefore, it is projected that the petitioner had not waived the requirement of Section 12(5) of the Arbitration and Conciliation Act, 1996. Thereafter, this application has been filed.

4. The learned CGC, by referring to the stand taken in the affidavit-in-opposition, has submitted that the petitioner had defaulted in achieving the requisite progress. Therefore, after service of notice, the work was terminated by issuing termination notice dated 08.12.2020. Accordingly, it is submitted that for reasons assigned, the stand of the respondent is that certain part of the claim of the petitioner relating to refund of security deposit and earnest money, etc. are liable to be forfeited and it is also projected that in the meanwhile the final PVC bill has been paid to the petitioner, notwithstanding that security deposit and earnest money are still pending.

5. It is also stated that as per the Railway General Conditions of Contract, it is provided that the Railways would have panel of arbitrators and therefore, a letter dated 25.02.2021 was issued to the petitioner for submission of their consent for waiver under Section 12 (5) of the Arbitration and Conciliation Act, 1996, which was not responded to. The learned CGC has submitted that in view of the conditions contained in the GCC, the said clause becomes a part of the contract agreement. Accordingly, it is submitted

that the appointment of Arbitrator should be left to the discretion of the NF Railway authorities.

6. Considered the submissions made by the learned counsel for both sides.

7. In sub-section 5 of Section 12 of the Arbitration and Conciliation Act, 1996, it is provided that notwithstanding any prior agreement to the contrary, any person whose relationship with the parties or counsel for the subject matter in dispute, falls under any of the categories specified in the 7th Schedule, shall be ineligible to be appointed as an Arbitrator. Therefore, notwithstanding that the parties have agreed to a manner in which arbitration shall be proceeded with, but if there is empanel Arbitrator by the NF Railway, they would have certain amount of relationship with the respondents and therefore, they would be covered by the 7th schedule of the Arbitration and Conciliation Act, 1996, moreso if the proposed Arbitrators are the ex employees of any railways in the Country.

8. As the petitioners have not waived its right for appointment of the departmental arbitrator under Section 12(5) of the Arbitration and Conciliation Act, 1996, the Court is inclined to propose the name of Honourable Mr. Justice Achintya Malla Bujor Barua, former Judge of this Court as the sole Arbitrator to arbitrate all the disputes between the parties arising out of or in connection with the contract agreement dated 20.07.2018.

9. Accordingly, the petitioner shall take steps as per the requirement of Section 11(8) of the Arbitration and Conciliation Act, 1996 so as to enable the proposed Arbitrator to give a disclosure in writing as per the requirement of the said provision.

10. Requisite steps to be taken in 2 (two) days for service of such notice along with the certified copy of this order upon the learned proposed arbitrator.

11. On receipt of the notice, the learned proposed arbitrator is requested to do the needful, preferably within 2 weeks thereafter.

12. List on 26.06.2024.

JUDGE

Comparing Assistant