AC No.24-2024

IN THE HIGH COURT OF MADHYA PRADESH AT INDORE

BEFORE

HON'BLE SHRI JUSTICE SUBODH ABHYANKAR

ON THE 9th OF SEPTEMBER, 2024

ARBITRATION CASE No. 24 of 2023

M/S AGROH INFRASTRUCTURES DEVELOPERS PVT. LTD.

Versus

M/S PRISM JOHNSON LIMITED AND OTHERS

Appearance:

Shri Vivek Dalal - Advocate for the petitioner.

Shri Chinmay Kalgaonkar- Advocate for the respondents

ORDER

Heard.

2] This application has been filed under Section 11(6) of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as 'the Act of 1996') read with Rule 2 of the Scheme of Appointment of Arbitrator by the Hon'ble Chief Justice of the Madhya Pradesh High Court.

3] In brief, facts of the case are that the applicant happens to be an Infrastructure Development Company, which had entered into a work contract with the respondent, M/s Prism Johnson Limited, on 14.04.2017 for the purpose of processing and converting free issue raw materials into Ready Mix Concrete at the Project site, *i.e.*, Kagvadar-Una (Rajula-Una), Gujarat. Admittedly, certain disputes have arisen in respect of the aforesaid contract and according to the applicant, it has suffered losses to the tune of Rs.17,10,07,313/-.

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And after some communication between the parties, a reply was also sent by the non-applicant on 16.09.2020, of which a reply-cum-notice was also sent by the applicant on 28.10.2020, claiming the aforesaid amount, and simultaneously, a notice for appointment of arbitrator was also sent invoking the arbitration clause No.29 of the works contract.

4] Counsel for the applicant has submitted that both the parties have claim and counterclaim against each other, which can only be resolved through arbitration as provided under Clause 29 and thus, the Arbitrator may be appointed in terms of Section 11 of the Act of 1996.

5] The prayer is opposed by the counsel for the non-applicant and a reply to the applicant has also been filed contending that no case for appointment of arbitrator is made out and the applicant is trying to take undue advantage of the provisions of Section 8(2) of the Insolvency and Bankruptcy Code, 2016, because the present non-applicant has filed an application under Section 9 of the Code of 2016 as Operational Creditor against the present applicant, who has defaulted in payment of a sum of Rs.8,01,81,917/-, and has admitted its liability time and again through various e-mails.

6] Counsel for the non-applicant has also submitted that the application itself is not maintainable for want of original agreement, as is mandatory under Rule 2(a) of the Scheme of Appointment of Arbitrator by the Chief Justice of Madhya Pradesh High Court, 1996 requiring original or certified copy of the arbitration agreement. It is also submitted that there is no dispute between the

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parties which can be termed as interpretation of clauses, technical specifications **etc.,** as provided under the arbitration clause. Thus, it is submitted that the application may be dismissed.

7] Heard counsel for the parties and perused the record.

8] So far as the non-compliance of Rule 2(a) of Rules of 1996 is concerned, this Court finds that the applicant has not denied the factum of entering into the agreement with the non-applicant, and apart from that, the applicant has also filed an application for exemption from filing certified copy of the original contract, contending that the original contract is lying with the non-applicant only, of which there is no reply by the non-applicant, instead it is contended that the applicant has not filed the agreement in original, which, in the considered opinion of this court is be a dishonest attempt to wriggle out of the matter, which is not appreciated. Thus, the aforesaid contention of the non-applicant is hereby rejected.

9] So far as the arbitration clause is concerned, the same reads as under:-

> "29. All disputes or difference of opinions, on account of interpretation of clauses, technical specifications **etc**., shall be resolved through direct and mutual discussions **at site level.** In the case of difference of opinion still persisting, then the matter shall be referred to the Chief Executive Officer at AIDPL and & CEO of RMC (INDIA). However, in case parties fail to reach amicable settlement, the matter shall be referred to arbitration as mutually agreeable by both the parties. The Arbitration shall be governed as per Indian Arbitration and Conciliation Act 1996 and shall be held in the Indore."
>
> ***(Emphasis Supplied)***

10] A perusal of the aforesaid arbitration clause would reveal that it refers to **the disputes or difference of opinions, *on account of***

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interpretation of clauses, technical specifications etc., but not to all the disputes or difference of opinions. This Court is of the considered opinion that had it been the intention of the parties to refer all the disputes to the arbitration, then there was no difficulty for them to couch the language accordingly, viz., they could have agreed that, 'all the disputes and difference of opinions between the parties shall be referred to the arbitrator', meaning thereby, the parties did not intend to refer all the disputes to the arbitrator, but instead, only some specific disputes relating to interpretation of clauses and technical specifications have been considered to be resolved through arbitration. The narrow scope of the arbitration clause is also apparent from the fact that it has also been agreed between the parties that before resorting to arbitration clause, such disputes relating to interpretation of clauses and technical specifications shall be resolved through direct and mutual discussions *at site level*, and only after such discussions failed, arbitration was to be resorted to. This court is also of the considered opinion that the use of the word "*etc.*" after 'technical specifications', would only mean similar items are also included, and would not encompass in its gamut all the other disputes, and reading the word *etc.*, as '*all the other disputes'* would amount to misconstruing the same.

11] In the notice issued by the applicant invoking arbitration, dated 28.10.2020, it is found that there is no reference of any dispute relating to interpretation of any clause or technical specification in respect of the work contract, and in fact, a sum of

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Rs.17,10,07,313/- is sought to be claimed by the applicant from the non-applicant towards loss and damages suffered due to non operation of RMC plant and other damages. It is also not stated if any dispute between the parties was also tried to be resolved *at site* only. In such circumstances, this Court is of the considered opinion that the arbitration clause cannot be invoked by the applicant to refer to the dispute, which according to it has arisen between the parties.

12] In view of the same, no case for interference is made out and the application is hereby ***dismissed***. However, with liberty reserved to the applicant to take recourse of such remedies as are available to it under law.

13] With the aforesaid, application stands ***dismissed*** and ***disposed of***.

(SUBODH ABHYANKAR)
JUDGE

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