

(2009) 12 DEL CK 0005

Delhi High Court

Case No: Arbitration Petition No. 173 of 2008

Punj Lloyd Ltd. and Another

APPELLANT

Vs

National Highway Authority of
India

RESPONDENT

Date of Decision: Dec. 8, 2009

Acts Referred:

- Arbitration and Conciliation Act, 1996 - Section 11

Hon'ble Judges: A.P. Shah, C.J

Bench: Single Bench

Advocate: Dharendra Negi, for the Appellant; Sumit Gahlawat, for the Respondent

Judgement

@JUDGMENTTAG-ORDER

Ajit Prakash Shah, C.J.

This is an application u/s 11 of the Arbitration and Conciliation Act, 1996 to appoint an independent person as presiding arbitrator and thereby constitute an arbitral tribunal.

2. The facts giving rise to this petition are as follows:

The joint venture formed by applicants in the name of "Punj Lloyd Ltd.  Progressive Constructions Ltd. JV" had entered into a contract dated 8th October, 2001 for construction of an access controlled four lane divided carriageway with six lane structures of Jaipur Bypass, Phase II, Zone D, 34.7 KM long, KM 220 of NH-8 (Delhi-Jaipur road) at Chandwaji and KM 246 of NH-11 (Jaipur-Sikar Road) at Harmara.

3. Certain disputes arose in the course of the execution of the contract and the applicants took recourse to provisions of the arbitration agreement contained in Clause 67.3 of the contract. The relevant portion of Clause 67.3 is reproduced below:

Sub-Clause 67.3: Arbitration

This Sub-clause shall read as below:

Any dispute in respect of which the decision, if any, of the Engineer has not become final and binding pursuant to Sub-clause 67.1, shall be finally settled as set forth below:

i) the dispute with the Contractor, whether Indian or foreigner, shall be finally settled by arbitration in accordance with the Indian Arbitration and Conciliation Act, 1996, or any statutory amendment thereof. The arbitration tribunal shall consist of three arbitrators, one each to be appointed by the Employer and the Contractor; the third arbitrator shall be chosen by the two Arbitrator so appointed by the parties and shall act a presiding Arbitrator. In case of failure of the two Arbitrator, appointed by the parties, to reach upon a consensus within a period of 28 days from the appointment of the Arbitrator appointed subsequently, the Presiding Arbitrator shall be appointed by the President, Indian Road Congress. For the purposes of this Sub-Clause, the term "Indian Contractor" means a Contractor who is registered in Indian and is a juridic person created under Indian Law as well as a joint venture between such a Contractor and a foreign Contractor.

4. On October 16, 2007, the applicants, in accordance with the above clause, gave notice of commencement of arbitration and appointed Mr.V.K. Shrotriya as their nominee arbitrator. On November 13, 2007, the respondent appointed Mr.K.K. Verma as its nominee arbitrator. As per the agreement, the third arbitrator was to be chosen by the two arbitrators appointed by the parties and in case of failure of the two arbitrators appointed by the parties to reach upon a consensus within 28 days from the appointment of the arbitrator appointed subsequently, the presiding arbitrator was to be appointed by the President, Indian Roads Congress. It is seen from the records that the second arbitrator Mr.K.K. Verma claimed that one Mr.G.S. Tawarmalani has been appointed as presiding arbitrator with the consent of the first arbitrator. The first arbitrator, however, has taken a consistent stand that he had not given his consent for appointment of Mr.Tawarmalani as the presiding arbitrator. On the other hand, according to him during the discussions between the two nominee arbitrators, he had suggested three other names to the second arbitrator for appointment of the presiding arbitrator. It is seen that thereafter a considerable correspondence was exchanged between the parties. The applicants had also approached the President, Indian Roads Congress for appointment of the presiding arbitrator but due to the objection raised by the respondent ♦ NHAI, the Indian Roads Congress returned the request for appointment of the presiding arbitrator.

5. I have heard the Counsel appearing for both the parties. A preliminary objection is raised by the Counsel for the respondent about the maintainability of the petition on the ground that this Court has no territorial jurisdiction to entertain the petition

as the subject matter of the dispute is situated at Jaipur, Rajasthan and payments were also made at Rajasthan. This objection is without any merit inasmuch as the tender for work in question was floated in Delhi, the pre-bid meeting for the works was held at Delhi, the letter accepting the bid was also issued from Delhi and the agreement between the parties was also signed at Delhi. Thus substantial part of the cause of action has taken place in Delhi.

6. After hearing the Counsel appearing for the parties I am satisfied that this is a fit case to direct the President, Indian Roads Congress to appoint the presiding arbitrator in accordance with the provisions of Clause 67.3 of the contract. The President, Indian Roads Congress, Kama Koti Marg, Sector 6, R.K. Puram, New Delhi is hereby directed to consider the request of the applicants for appointment of the presiding arbitrator afresh and make the appointment of presiding arbitrator within a period of four weeks from the date of communication of this order.

7. The Registry is directed to forward a copy of this order to the President, Indian Roads Congress.

8. The petition stands disposed of in terms of the aforesaid order.