

(2012) 04 DEL CK 0456
Delhi High Court
Case No: FAO (OS) 720 of 2010

Emaar Mgf
Construction Pvt. Ltd.

APPELLANT

Vs

DDA and Others

RESPONDENT

Date of Decision: April 12, 2012

Acts Referred:

- Arbitration and Conciliation Act, 1996 - Section 11, 17, 9

Hon'ble Judges: Siddharth Mridul, J; Pradeep Nandrajog, J

Bench: Division Bench

Advocate: Arvind Nigam, Mr. Chetan Sharma, instructed by Mr. Darpan Wadhwa, Ms. Deepali Sharma, Ms. Simran Brar, Mr. Akhil Sachar, Mr. Dheeraj and Mr. Sunil Goel, for the Appellant; Ajay Verma, Advocate and Mr. Amit Mehra, Advocate for R-1. Mr. Sanjiv Kakra, Advocate for State Bank of Patiala and Mr. Ankur Mittal, Advocate for R-3, for the Respondent

Judgement

Pradeep Nandrajog, J.

Instant appeal lays a challenge to the order dated December 20, 2010 dismissing appellant's petition u/s 9 of the Arbitration and Conciliation Act, 1996. Bank guarantees in sum of Rs. 183 crores were the subject matter of the said petition filed and relief prayed was to restrain payment under the bank guarantees on the allegation that they were fraudulently invoked.

2. By the time matter came up for hearing before the learned Single Judge and an ex-parte injunction was granted, Rs. 90 crores stood already credited to the account of DDA and for the balance Rs. 93 crores pay orders had been issued and on account of the interim injunction, the amount pertaining to the pay order was not credited to DDA's account.

3. Since the interim relief sought by the appellant was ultimately denied, necessitating instant appeal being filed, vide order dated January 07, 2011 the

Division Bench directed that said sum of Rs. 93 crores would be deposited in this Court by the issuing bank(s) together with interest from the date the account of the appellant was debited when the pay orders were issued till date of deposit.

4. The appeal has lingered on, and on February 21, 2012, the Division Bench had queried as to what was the stage of arbitration, for the reason the contract between the parties contains an arbitration clause. The Bench was informed that the arbitral tribunal had not been constituted and the appellant had taken records to proceedings u/s 11 of the Arbitration and Conciliation Act, 1996.

5. The matter was thereafter adjourned requiring DDA to inform whether it would agree to this Court constituting the arbitral tribunal.

6. Sh.Ajay Verma, learned counsel for DDA had insisted that the arbitral tribunal required the members to be nominated from out of a list prepared by DDA.

7. Today, Sh.Ajay Verma, learned counsel for DDA states that DDA has no objection if Justice V.S.Aggarwal (Retd.) is nominated as the Presiding Arbitrator with option reserved for DDA to nominate a person having engineering background as the second arbitrator leaving it to the appellant to nominate the third arbitrator, from out of the list maintained by DDA.

8. Sh.Arvind Nigam, learned senior counsel for the appellant states that from out of the list of engineers prepared by DDA and supplied to his client, appellant nominates Sh.S.B.Lal, Chief Engineer (Retd.) BSNL r/o C-5/21, GF Grand Vasant, New Delhi 110070 (Mob No.9868844483 and 9810040310).

9. Sh.Ajay Verma, learned counsel for DDA states that by today evening itself, DDA would nominate its nominee arbitrator and the arbitral tribunal be declared by this Court to consist of Justice V.S.Aggarwal (Retd.) (Presiding Arbitrator), Sh.S.B.Lal Chief Engineer (Retd.) BSNL and the person to be nominated by DDA.

10. Ordered accordingly. DDA is directed to nominate its arbitrator and convey the decision to the appellant latest by April 13, 2012.

11. Sh.Arvind Nigam, learned senior counsel for the appellant states that he would instruct the appellant to withdraw the petition filed by the appellant u/s 11 of the Arbitration and Conciliation Act, 1996.

12. Learned counsel for the parties state that the appeal may be disposed of observing that nothing stated, reflected upon or opined upon by the learned Single Judge or by the Division Bench, in its order dated December 24, 2010, would be construed as an expression on the merits of the rival contentions and that it be left open to the arbitral tribunal, if a request is made by either party, to pass interim orders u/s 17 of the Arbitration and Conciliation Act, 1996, meaning thereby, that notwithstanding the petition filed by the appellant u/s 9 of the Arbitration and Conciliation Act, 1996 being decided, the matter pertaining to interim measure be

kept open.

13. Ordered accordingly. It is hereby clarified that nothing stated in the impugned order or in the interim order dated December 24, 2010 passed in the appeal would be construed as an expression on the merits of the rival claims and the arbitral tribunal would simply ignore the said two orders if either party seeks any interim measure to be taken or order to be passed pending adjudication of the main dispute.

14. Rs. 93 crores with accrued interest thereon which are lying deposited in this Court pursuant to interim order passed in the instant appeal be kept invested by the registry in a fixed deposit and in respect of which the registry would abide by any directions issued by the arbitral tribunal.

15. We request the arbitral tribunal to hold a preliminary hearing preferably within 15 days from receipt of the present order, on which date the tribunal would fix its fee as also secretarial charges, as also lay down the schedule for completion of pleadings by the parties. The appeal stands disposed of in terms of afore-noted consent directions without any order as to costs.