

Ptc India Ltd. 2Nd Floor, Nbcc Towers, ... vs Shiva Alloys Pvt. Ltd. D-22, Sma, ... on 16 September, 2022

Author: Neena Bansal Krishna

Bench: Neena Bansal Krishna

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IN THE HIGH COURT OF DELHI AT NEW DELHI

ARB.P. 918/2021

PTC INDIA LTD.

2nd Floor, NBCC Towers,

15, Bhikaji Kama Place,

New Delhi-110066

Through:

Mr. Ravi Kishore, Mr. D

& Mr. Keshav Singh, Adv

versus

SHIVA ALLOYS PVT. LTD.

D-22, SMA, Industrial Area,

G.T. Karnal Road,

New Delhi-110033

Through:

None.

CORAM:

HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

ORDER

% 16.09.2022

1. The present petition has been filed under Section 11(5) of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as "A&C Act, 1996") on behalf of the petitioner seeking appointment of an Arbitrator to adjudicate the disputes between the parties.

2. It is submitted that the petitioner and the respondent entered into the Agreement dated 31st January, 2017 for supply of 1.05 MW RTC (round the clock) power for the period 10th February, 2017 to 10th September, 2017. The petitioner entered into a back-to-back Agreement dated 31st January, 2017 with Magpie Hydel Construction Operation Industries Private Limited under which the Magpie agreed to supply 1.05 MW RTC power from 01st February, 2017 to 30th September, 2017. The petitioner accordingly, started supplying power to the respondent in terms of the Agreement dated 31st January, 2017. The respondent was liable to make the payment for the supply of the power against the energy bills, open access bills and the compensation bills in terms of the Clause 4 of the Agreement dated 31st January, 2017. However, vide E-mail dated 16th May, 2017, the respondent requested the petitioner to terminate the Agreement and it was mutually agreed that the Agreement would be terminated w.e.f. 01st June, 2017 but both the parties shall remain liable for all deeds, acts, transactions undertaken or done before the date of termination of the Agreement.

3. It is asserted that the respondent has failed to honour its liability and obligations under the Agreement agreed at the time of the termination of Agreement and has defaulted in making the payment against the open access invoices/charges, compensation charges, energy charges, etc. for the period from 01st March, 2017 to 31st May, 2017 and there is a total outstanding amount is sum of Rs. 14,12,757/- along with the interest.

4. Since the amount had been wrongfully withheld, the petitioner issued the Legal Notice dated 15th September, 202 despite which the respondent neither gave a reply nor discharged its liability.

5. The Agreement dated 31st January, 2017 provides for Dispute Resolution Mechanism in Clause 11 which reads as under:

"Dispute Resolution Mechanism:

All differences or disputes between the parties arising out of or in connection with any question or matter of dispute shall be settled in accordance with the Electricity Act, 2013 as amended from time to time. If the dispute arising out of or in connection with any claims not covered under the Electricity Act, such disputes shall be resolved by arbitration under the Indian Arbitration and Conciliation Act, 1996. Notwithstanding any legal dispute, disagreement or difference, the parties hereto continue to perform the respective obligations under this agreement. The venue of such arbitration will be New Delhi."

6. It is submitted that the disputes which have been arisen between the parties are not covered by the Electricity Act, 2003 and are amenable to the jurisdiction under the A&C Act, 1996.

7. Learned counsel for the petitioner has placed reliance on the decision of the Hon'ble Supreme Court in Gujarat Urja Vikash Nigam Ltd. vs. Essar Power Ltd. to submit that only disputes between the licensee and the generating Companies, can be adjudicated either by the State Commission or the person to whom it is referred for arbitration.

8. Learned counsel for the petitioner has also placed reliance on the decision of the Hon'ble Supreme Court in Hindustan Zinc Limited (HZL) vs. Ajmer Vidyut Vitran Nigam Limited (2019) 17 SCC 82, wherein the Apex Court held as under:

"19. Coming now to Section 86 of the Act, it is clear that the adjudication upon disputes can only be between licensees and generating companies and not between licensees and consumers, which is provided for in an open access situation by Section 42."

9. It is submitted that the petitioner is a Licensee, the licence being issued by the Central Electricity Regulatory Commission, but the respondent is neither a Licensee nor a generating Company. Hence, the Electricity Act, 2003 is not applicable to the present dispute.

10. The Letter of Invocation for Arbitration was issued by the petitioner vide Letter dated 16th January, 2001 and the name of Mr. B.L. Garg, Additional District and Sessions Judge (Retd.) was suggested as the Sole Arbitrator, but the same was not accepted by the respondent. Hence, the present petition has been filed for appointment of an Arbitrator.

11. Submissions heard.

12. It may be noted that the respondent had put an appearance but no reply has been filed to the petition.

13. Considering that there is a valid Arbitration Agreement between the parties and in the light of the facts and submissions made, Ms. Bharti Pawar Tripathy, Advocate, Mobile No. 9810945051, is hereby appointed as the independent Arbitrator to adjudicate the disputes between the parties.

14. The parties are at liberty to raise their respective objections before the Arbitrator.

15. This is subject to the Arbitrator making necessary disclosure as under

Section 12(1) of A&C Act, 1996 and not being ineligible under Section 12(5) of the A&C Act, 1996. The parties are at liberty to approach the learned Arbitrator.

16. The petition is accordingly disposed of in the above terms.

NEENA BANSAL KRISHNA, J SEPTEMBER 16, 2022 S.Sharma