

IN THE HIGH COURT OF JHARKHAND AT RANCHI

Arbitration Application No. 1 of 2021

M/s. Baba Transport, represented through its Proprietor namely, Manoj Kumar Singh, aged about 49 years, s/o Sri Shambhu Narayan Singh, having its office at Digwadih No.12, PO & PS-Jealgora, Distt.-Dhanbad (Jharkhand) 828001
... ... Petitioner

Versus

M/s. Tata Steel Limited, Purchase Department through its General Manager Jharia Division, PO & PS-Jamadoba, Distt.-Dhanbad (Jharkhand) 828112
... ... Respondent

CORAM: HON'BLE THE ACTING CHIEF JUSTICE

For the Petitioner : Mr. P. K. Bhattacharya, Advocate
For the Respondents : Mr. P.A.S Pati, Advocate
Ms. Malsi Pathak, Advocate

Order No.24 / Dated: 11th March 2024

Heard Mr. P. K. Bhattacharya, the learned counsel for the petitioner and Mr. P. A. S. Pati, the learned counsel for the respondent.

2. This arbitration application is opposed on three grounds viz. (i) no claim is made in respect of RFQ No.3100033960/16000441123/932 dated 25th October 2014 (ii) claim raised by the petitioner involves more than one contract and (iii) invocation of arbitration clause is barred by limitation. Mr. P.A.S Pati, the learned counsel for the respondent has referred to "*Duro Felguera, S.A v. Gangavaram Port Ltd.*" (2017) 9 SCC 729 to submit that a composite notice under section 21 of the Arbitration and Conciliation (Amendment) Act, 2019 (in short, AC Act) invoking arbitration clauses in respect of different agreements is not maintainable.

3. A legal notice was issued by the petitioner to the respondent on 5th December 2019. Later, the petitioner gave a separate notice to the respondent under section 21 of the AC Act on 30th September 2020. The legal notice dated 5th December 2019 and the notice under section 21 of the AC Act referred to RFQ No. 310033960/1600044123/932 dated 25th October 2014.

4. The legal notice dated 5th December 2019 referred to more than one contract shall become apparent on a glance at the following statements

made therein:

“1. That NIT/RFQ no 3100033960/1600044123/932 dated 25.10.2014 was floated by your company wherein validity of contract was 5 years with effect from 1/4/2015 to 31/3/2020. The selection of the vendor was on proven capabilities. The hiring of 52 seater buses for taking the student to school from Tata DAV School Jamadoba, Denobli school CRFI for Jamadoba group and Denobli school Sijua, Denobli, CRFI, Tata dav sijua for sijua group and for college bus from jamadoba Gr to dhanbad and for sijua group to katras and dhanbad for carrying the student. Availability of owned, dedicated vehicles with maximum age of 3 years, compared to stated requirement on each rout. Significance past experience in the vehicle hire business.

.....
9. That my client thereafter represented the Senior Manager (Purchase and Store) through reference no. BT/B/029/16-17 dated 02/09/2016 and gave the cost break for RFQ no. 3100033960/1600052350/932 the cost breakup was for period of 5 years.

10. That the work order was issued in favor of my client on 29.11.2016 vides work order no 4700057164/932 for validity of 3 (three) years but the validity period was from 01.11.2016 to 31.03.2019.

.....
18. That my client by letter no BT/B/017/18-19 dated 29-03-2019 requested Senior Manager (Purchase & Store) that he is ready to execute the work on the lowest rate quoted for the FRQ 1600093636/932 dated 06-mar-2019.

”

5. The notice dated 30th September 2020 issued to M/s Tata Steel Ltd. Jamadoba, Dhanbad under section 21 of the AC Act specifically referred that the same has been issued under Clause 14 of the RFQ No.3100033960/1600044123/ 932 dated 25th October 2014. The caption of the notice dated 30th September 2020 reads as under:

“To
The General Manager
Tata Steel Ltd.
Jamadoba, Dhanbad

In the matter of :-
Arbitration Notice Under Section-21 of the Arbitration & Conciliation (Amendment) Act, 2019 On BEHALF OF CLAIMANT/BABA TRANSPORT.

A_N_D

In the matter of :-
Arbitration Notice U/Sec. 21 as per Arbitration Clause No. 14 of the Terms and Conditions/Purchase Department/Tata Steel Ltd. vide RFQ No. 3100033960/ 1600044123/932 PAGE 2 of 9 PRINT dated 25.10.2014.

A_N_D

In the matter of :-
Legal Notice dated 5.12.19 sent under Speed Post through Advocate on behalf of My Client M/s. Baba Transport Proprietor : Manoj Kumar Singh AS CLAIMANT.

A_N_D

In the matter of :-
Date (s)-wise MATRIX OF FACTS Datewise References-wise, separate sheet annexed herewith/herinafter w.e.f 31.07.2011 to 04.09.2019 altogether serial(s) 1 to 27 (i.e MATRIX OF PACIS at a glance (Back-DRC OF The CONTRACT WORK with Ref. No. NIT/REQ No. 3100033960/1600044123/932 Dated 25.10.14.

A_N_D

Dispute arising out of the said RPQ No. 3100033960, 1600044123/932 PRINT DT. 25.10.2014. For the captioned Job "Hiring of 52 Seater buses for taking the students to the School TO TATA DAV School Janadoba Denobili School, CFRI for Jamadoba Group and Denobili School, Sijua, Danobili CFRT Tata DAV Sijua for Sijua Group & For College Bus from Jamadoba Gr. To Dhanbad and for Sijua Gr. To Katras & Dhanbad for carrying the students (contract validity 5 years w.e.f 01.04.2015 to 31.03.2020).

In the matter of :-

Arbitration/Arbitral Disputes-Reference-

Request Notice Under Section 21 on behalf of my Client/CLAIMANT M/S. BABA TRANSPORT, PROP. Manoj Kumar Singh,Digwadih No. 12, PO-Jealgora, Dist. Dhanbad-828100, Phone: 9431162044 e.mail: transportbaba@ymail.com

”

6. However, the claims on account of loss caused due to investment of Rs.2,34,33,708.00 for purchase of new buses, idle period/ideal time loss for Rs.95,24,032.00, ideal buses as per day expenses Rs.15,12,000.00, loss of profit due to loss of Rs.1,22,45,184.00 and interest thereon, have been made with reference to work order no. 4700057164/932 dated 29th September 2016.

7. The claims raised by the petitioner in the notice dated 30th September 2020 are extracted, as under:

"My client crave leave to reserve Right to place his entire Losses/Claims before the Learned Arbitrator WHILE THE STATEMENT OF FACT + CLAIMS + POINTS AT ISSUE Shall be filed u/SEC.. 2 (1) after his appointment of Arbitrator as per Clause No. 14 of the Terms and Conditions during TENURE or AFTER TENURE AND EVEN AFTER TERMINATION OF CONTRACT (CAUSE OF DISPUTE YET w.e.f. issue of Work-Order on 29.11.2016 by dayone DISPUTE of erroneous 31.3.2019 IN RESPECT PLACE OF 31.10.2019. Thus Dispute with the account of Reducing 7 months periodicity Day-ONE her been cropped up w.e.f. 21.12.2016 and still being continued while surfaced at the termination of Contract and really dispute growing as contended at Para-25 of the said Legal Notice dated 5.12.19 given/apprised of TSL/GM by my client provisionally estimating (Losses/Disputes/Claims)."

- i) Basically towards heavy investment of Purchase of New Buses (say Rs. 2,34,33,708.00) (Vide LP-912/4 BS3 Model Bus).
- ii) secondly, giving, the order to a debitible agency/ another person/and idle-period of my client per month Losses/say per day Losses w.e.f. idle-time (due to other debitible agency).
(For Rs. 95,24,032.00).
- iii) idle Buses & per day expenses Rs. 15,12,000.00.
- iv) Loss of Profit due to Loss of 12245184.00 Turnover @ 15% p.a for yearly TURN-OVER. All are provisionally estimated Losses (subject to add/alter/modify/vary/compound before the Learned Arbitrator to be referred to by Company as per Clause 14 which is scripted at page 7 to 9 of RFQ 3100033960/1600044123/932 continuation sheet Page 9 of PRINT DT. 25.10.14.
- v) Interest U/ Sec. 31 (7) of the A & C Act, 2019 upon the Total Claims Items (i) to (iv) (provisionally U/sec. 21 (Subject to finality add/alter/vary/compound U/Sec. 30), under section 23 (1) @ 18% p.a. w.e.f. date of Notice U/Sec. 21with all retrospective effect (Prelite, Pendente-li,

Post lite INTEREST (S) TILL ACTUAL PAYMENT”

8. Quite apparently, no claim arising out of RFQ No.3100033960/16000441123/932 dated 25th October 2014 is referred to in the notice under section 21 of the AC Act. Moreover, with reference to RFQ No.3100033960/16000441123/932 dated 25th October 2014, the notice under section 21 of the AC Act issued on 30th September 2020 was clearly beyond limitation being issued after three years. Therefore, the present arbitration application must be held not maintainable for the aforementioned reasons.

9. Accordingly, Arbitration Application No. 1 of 2021 is dismissed.

(Shree Chandrashekhar, A.C.J.)

Amit