

HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU

Arb P No. 3/2024

M/s Ved Parkash Gupta

...Petitioner(s)

Regd. Office H. No.45, Adarsh Colony,
Udhampur (J&K) 182101

Through its Partner

Akashdeep, Age 33 yrs

S/O Sh. Arun Kumar Gupta

R/O H. No.45, Adarsh Colony,

Udhampur (J&K) 182101

Through: Mr. Dheeraj Sharma, Advocate..

Vs.

Union of India

...Respondent(s)

through Engineer-in-Chief (AF) Zone,

C/O 39 Wing, AF

Pin-936839

C/O 56 APO.

Through: Mr. Vishal Sharma, DSGI

CORAM:

HON'BLE THE CHIEF JUSTICE

ORDER

31.10.2024

1. Heard Mr. Dheeraj Sharma, learned counsel for the petitioner and Mr. Vishal Sharma, learned DSGI for the respondents at length and perused the record.

2. The present petition has been filed by the petitioner seeking appointment of an independent Arbitrator under Section 11(6) of the J&K Arbitration and Conciliation Act, 1996, to resolve the dispute that has arisen between the parties.

3. Brief facts, which lead to the filing of the present petition, are that the petitioner is a partnership concern company carrying on the business as M/s Ved Parkash Gupta Govt. Contractor and Govt. Order suppliers.

4. That on 02.07.2015, CEAUFU-54/2013-14 and amended CA No. CEAUFU-10/2015-16 for Provision of ATC BUILDING AF STATION UDHAMPUR for an amount of Rs. 8,38,79,457.38 was accepted by the Chief Engineer (AF) Zone, C/O 39 Wing, AF PIN-936839 in favour of the petitioner. On 06.07.2015, work order No.1(F) was issued in favour of the petitioner by GE(AF) Military Engineer Services Air Force Station Udhampur. It is averred in the petition that handing over the work site took place on 10.07.2015 and on the same very day, the work commenced, and date of completion of work was fixed as 09.01.2017. It is pertinent to mention that on 28.04.2016, DO No.2(F) to 13(P) was issued again in favour of the petitioner by GE (AF) Military Engineer Service Air Force Station Udhampur in which authority was Condition-6 of IAFW-2249 forming part of CA and brief description of work to be carried out was Omission of provisional qualities against Sch 'A' part-II (Plumbing work) Sch 'A' Part-III (internal water supply) Sch 'A' Part-IV (Sewage disposal), Part-VIII Sec I(Road, path, culvert), Part-VIII (Sec-II) (Road/hardstanding), Part-IX (Area drainage), Part-X (Site clearance), Part-XIII (Fencing), Part-XIV (Landing Tee) Part-XV (Demolition/dismantling), Part-XVII (Credit Schedule). It is further averred in the petition that under Condition 11(A)(vii) of IAFW 2249, time for completion of work was extended by the accepting officer and the petitioner company completed the given work within the extended period of contract.

5. It is submitted by the learned counsel for the petitioner that the final bill was submitted by the petitioner on 21.12.2021 and vide separate communication on 19.03.2022, the petitioner claimed the final bill and other

claims from the respondents. However, to the utter dismay of the petitioner, the respondent rejected the claims of the petitioner.

6. It is further submitted by the learned counsel for the petitioner that vide letters dated 22.05.2022, 30.06.2022 and 15.11.2022, a request is made to the department for referring the disputes arisen between the parties for arbitration under Condition-70 of GCC (IAFW-2249).

7. It is stated in the petition that the parties to the contract agreement are governed by the General conditions of Contract being IAFW-2249. The clause 70 of the General Conditions of Contract –IAFW-2249 provides that all disputes between the parties to the contract shall after written notice by either party to the contract to the other of them be referred to Sole Arbitrator. That in this regard, the petitioner firm invoked the arbitration clause 70 of the contract agreement vide various letters mentioned (supra) and requested the respondent for reference of the claims to the Arbitrator. However, the respondent rejected the claims of the petitioner firm.

8. It is averred in the petition that an independent arbitrator is required to be appointed in this case as no serving officer of the department is eligible to be so appointed in view of the prohibition contained in Section 12(5) of Arbitration and Conciliation Act, 1996 read with Schedule 7 thereof.

9. In the above backdrop, the petitioner approached this court under Section 11(6) of the Arbitration and Conciliation Act, 1996 for reference of disputes/claims to an independent arbitrator.

10. Mr. Vishal Sharma, learned DSGI appearing for the respondents has resisted the application for appointment of arbitrator.

11. The fact that the petitioner has raised certain claims which, according to the petitioner, have not been addressed by the respondents, this

Court is of the view that a dispute exists between the parties, which would require resolution in accordance with the aforementioned Clause 70 of the General Conditions of Contract and this court is of the view that the dispute has to be ultimately decided by an Arbitrator.

12. With consensus of the learned counsel for the parties, I appoint **Mr. Satish Chander, ADG Retd., MES, R/O Lane No.4, Greater Kailash Jammu**, to act as the sole Arbitrator in this case, who shall proceed in the matter to decide the dispute between the parties and make an award in accordance with law after hearing the parties and charging the prescribed fee along with incidental expenses to be shared by the parties.

13. Parties may raise their claims and counter claims before the Arbitrator.

14. Registry to inform the Ld. Arbitrator accordingly.

15. With the above observation and direction, the petition stands disposed of.

(TASHI RABSTAN)
CHIEF JUSTICE

JAMMU
31.10.2024
Raj Kumar