

M/s. Nussli (Switzerland) Ltd

v.

Organizing Commit. Commonwealth Gam.2010

(Supreme Court Of India)

HON'BLE MR. JUSTICE SURINDER SINGH NIJJAR

Arbitration Petition No. 23 Of 2011 | 11-04-2012

I have heard the learned senior counsel for the parties.

A bare perusal of the pleadings would indicate that issues raised herein are of significance to a large number of parties who were participants in the execution of various projects either prior to, during or after the Commonwealth Games, 2010.

It appears that the matter has already been brought before the Court in a petition under Section 9 of The Arbitration and Conciliation Act, 1996 at the instance of the petitioner.

It also becomes apparent from the perusal of the record that an agreed order has been passed between the parties in the aforesaid proceedings on 07.12.2011 by the High Court of Delhi, which reads as under :-

"1. This is a petition under Section 9 of the Arbitration and Conciliation Act, 1996 for interim relief. On 29.06.2011 while issuing notice in the matter, this Court has passed the following order :

In the meantime, the respondent no. 2 will not remit the payment to the respondent no. 1, if not already done till the next date of hearing.

2. Counsel for the petitioner submits that petitioner has filed a petition under Section 11(6) and 12(3) of the Arbitration and Conciliation Act, before the Supreme Court of India, in which notice has been issued. This fact is not disputed by counsel for the respondent who submits that time has been granted to the respondent to file their reply.

3. Counsel for the parties submit that this petition may be disposed of with the following directions :

(i) Interim order dated 29.06.2011 shall continue, subject to the condition that the petitioner will keep the bank guarantee alive, till further orders to be passed by the arbitrator.

(ii) Petitioner will file an application under Section 17 of the Arbitration and Conciliation Act, 1996 before the arbitrator, within two weeks of the Arbitrator entering upon reference.

(iii) Both the parties will request the arbitrator, to hear the application for interim relief, at the first instance.

4. In view of the above agreed directions, petition stands disposed of.

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5. In view of the order passed in the O.M.P. No. 481/2011, applications stand dismissed."

In view of the aforesaid order, learned senior counsel for both the parties have agreed that the matter ought to be referred to Arbitration. However, Mr. Gopal Subramonium, learned senior counsel appearing for the respondent, submits that serious issues would arise which are currently under investigation of the CBI, which may ultimately culminate into certain conclusions which could result in the invalidation of the contract from inception.

He has, however, very fairly stated that there would be no impediment for the Arbitral Tribunal to look into all the issues including the allegations which are pending with the CBI in investigation.

I am of the opinion that the submission made by the learned senior counsel is in accordance with the law settled, not only by this Court, but in other jurisdictions also concerning international commercial arbitrations.

In view of the above, I see no reason to continue any further hearing in this matter.

It would be in the interests of justice to refer all the disputes arising between the parties in relation to the contract to the Arbitral Tribunal. The parties are entitled to submit their respective claims before the Arbitral Tribunal, which need not be limited to the submissions made by the parties in the present petition.

Since the factual and legal questions raised herein are complex and are also likely to have international repercussions, it would be appropriate to constitute the Arbitral Tribunal consisting of former Judges of this Court.

In view of the above, I hereby nominate Hon'ble Mr. Justice Kuldeep Singh (Retd.) as Chairman, Hon'ble Mr. Justice B.P. Singh (Retd.) and Hon'ble Mr. Justice R.V.Raveendran (Retd.) as the Arbitrators.