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No appointment of an Arbitrator if the Notice invoking arbitration sent to wrong address

Glocaledge Consultants Pvt. Ltd. v. Rec Power Distribution Company Limited

Case No.	Arb. P. 1045/2021
Date	21 February 2022
Court	High Court of Delhi
Coram	Hon'ble Mr. Justice Vibhu Bakhru

1. BRIEF FACTS:

- 1.1 In order to monitor progress of projects on real time basis across PAN India, REC Power Distribution Company Limited (**“Respondent”**) invited proposals for development of a mobile application known as “Garv”. The Glocaledge Consultants Pvt. Ltd. (**“Petitioner”**) was successful in obtaining the contract from the Respondent for application development.
- 1.2 On 14th September 2015, a Work Order was issued by the Respondent towards Petitioner in order to develop the application at a contract value of INR 19,45,000.
- 1.3 The General Conditions laid down in the contract were also made applicable to the Work Order. The contract contained an Arbitration Clause as per which, in case, amicable settlement is not reached then the dispute will be referred to the Arbitrator appointed by Chairman of REC Power Development and Consultancy Limited (**“REC PDCL”**) and the dispute will be settled according to Arbitration and Conciliation Act, 1996 (**“the Act”**).
- 1.4 The Petitioner claimed that the Respondent had not cleared the dues which arose out of the extra services provided by the Petitioner. According to Petitioner, Chairman of REC PDCL declined to appoint an Arbitrator. Therefore, aggrieved by this, Petitioner filed a complaint in a government office for appointment of an Arbitrator.
- 1.5 Finally, a petition was filed by the Petitioner before the Hon’ble High Court of Delhi (**“High Court”**) for appointment of Arbitrator and commencement of Arbitral Proceedings.

2. ISSUES RAISED:

- Whether a complaint filed in a government office can be considered as a notice given to other party to invoke Arbitration Proceedings under Section 21 of the Act?
- Whether the petition can be rejected on the ground that the claims made were barred by limitation?

3. SUBMISSIONS OF THE PETITIONER:

- 3.1 The Petitioner submitted that it had accomplished the work as per the Work Order in the month of December 2015 which was appreciated by the Respondent and contract value for the said work was paid as well. It was submitted that the Respondent requested Petitioner via email on 23rd February 2016 for assistance in respect to a non-mobile application which was beyond the scope of Work Order.
- 3.2 It was claimed by the Petitioner that despite the requested services being outside the scope of Work Order, they were performed by the Petitioner and for doing the same they were entitled to an amount of Rs. 56,58,006. It was submitted that out of this amount INR 6,35,960/- was paid in April, 2016 and the remaining INR 50,22,046 was yet to be paid by the Respondent.
- 3.3 The Petitioner argued that provision under Section 21 of the Act was complied with and is invoked. To support this argument, the Petitioner relied upon two communications, one was an email sent to Mr Rajiv Sharma and another one was a complaint filed in the Department of Administrative Reforms and Public Grievances addressing Prime Minister’s Office (**“PMO”**) for appointment of Arbitrator and recovery of pending payment.

4. SUBMISSIONS OF THE RESPONDENT(s):

- 4.1 The Respondent submitted that the notice was not issued by the Petitioner therefore Arbitration Clause under Section 21 of the Act was not invoked.
- 4.2 It was claimed by the Respondent that all the payments due towards Petitioner were paid off and he was free from any kind of financial commitment towards Petitioner. It was also argued that for any kind of additional work, no separate Work Order was issued and the same was acknowledged by the Petitioner as well.
- 4.3 It was argued by the Respondent that the relief claimed by the Petitioner was barred by limitation.

5. DECISION OF THE COURT:

- 5.1 The Hon'ble High Court observed that both the communications made by the Petitioner were not addressed to Respondent. The Court was of the view that Arbitral Proceedings under Section 21 of the Act will initiate only when other party receives notice under the said section.
- 5.2 In the present matter, there was no communication received by Respondent from the Petitioner's side about the payment of dues and appointment of Arbitrator. Thus, it was held that the Arbitration Clause under Section 21 was not invoked.
- 5.3 The Hon'ble High Court while observing the second issue referred to *Bharat Sanchar Nigam and Anr. v. M/s Nortel Networks India Private Limited*.¹ The High Court noted that it was only Petitioner who was claiming that the payments were not cleared off since 2016 and there was no record of prove presented before the Court which stated that the same was acknowledged by the Respondent. Therefore, the High Court held that there is no scope for intervention when it comes to claim for payments as it was ex facie barred by limitation.
- 5.4 The Hon'ble High Court dismissed the Petition stating,
 "Merely, filing of a complaint with an unrelated government office expressing one's grievance does not constitute a notice under Section 21 of the A&C Act"
 ...
 "In cases where there is no vestige of doubt that the claims are barred by limitation, the Court would decline to appoint an arbitrator".

6. PSL OPINION:

- 6.1 The present judgment dealt with the commencement of Arbitral Proceeding under Section 21 of the Act. It is well established that the proceedings are commenced only when notice is received by the other party and mere filing of complaint in an unrelated office would not be considered as notice. Usually, the Arbitral Tribunal is bound to consider all the disputes between the parties as per Arbitration Clause, but in cases where the petition is barred by the limitation, the Arbitrator will not be appointed by the Court.

¹ (2021) 5 SCC 738.