

**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD****R/PETN. UNDER ARBITRATION ACT NO. 96 of 2019**

=====

ARIO INFRASTRUCTURE PVT. LTD
Versus
VADODARA GAS LIMITED

=====

Appearance:

MR SP MAJMUDAR(3456) for the Petitioner(s) No. 1
SHASHVATA U SHUKLA(8069) for the Petitioner(s) No. 1
MR VISHWAS K SHAH(5364) for the Respondent(s) No. 1

=====

**CORAM: HONOURABLE THE CHIEF JUSTICE MR. JUSTICE
ARAVIND KUMAR**

Date : 28/01/2022

ORAL ORDER

1. This petition is filed under Section 11(6) of the Arbitration and Conciliation Act, 1996 (for short, 'the Act'), seeking appointment of arbitrator for resolution of the disputes which is said to have arisen between the parties out of the agreement / contract dated 16.05.2014.

2. Heard, learned Advocate Mr. Sharvil Majmudar appearing for the Petitioner and learned Advocate Mr. Vishwas K. Shah appearing for the Respondent. Perused the record.

3. MECON Limited, on behalf of the GAIL, invited bids through E-tender for laying, commissioning of the underground steel pipeline network and associated work for Vadodara region.



2022:GUJHC:5402

3.1 The Respondent, then known as Gas Authority of India Limited (in brief, 'GAIL') issued an intent for the contract to petitioner for laying and construction of steel pipeline network and associated work for CNG and City Gas Distribution Project in Vadodara City.

3.2 The Contract agreement and indemnity bond for supply of material were signed and sent by the Petitioner to GAIL.

3.3 The Respondent, which is a public sector undertaking, is a joint venture company between GAIL and Vadodara Mahanagar Seva Sadan.

3.4 Dispute arose between the parties in respect of the contract agreement, which resulted in the Petitioner claiming resolution of said dispute being resolved through arbitration by relying upon the Arbitration Clause-59 contained in contract agreement, which reads thus;

"59.0 ARBITRATION

59.1 Clause No. 107.0 of GCC pertaining to Arbitration shall be replaced by the following:-

59.1.1 All disputes, controversies or claims between the parties (except in matters where the decision of the Engineer-in-Charge is deemed to be final and binding) which cannot be mutually resolved within a reasonable time shall be



2022:GUJHC:5402

referred to Arbitration by sole arbitrator.

59.1.2 The Employer / Consultant shall suggest a panel of three independent and distinguished persons to the other party (Bidder / Contractor / Supplier / Buyer as the case may be) to select any one among them to act as the Sole Arbitrator.

59.1.3 In the event of failure of the other party to select the sole Arbitrator within 30 days from the receipt of the communication suggesting the panel of arbitrators, the right of selection of sole Arbitrator by the other party shall stand forfeited and the Employer / Consultant shall have discretion to proceed with the appointment of the sole Arbitrator. The decision of the Employer / Consultant on the appointment of Sole Arbitrator shall be final and binding on the parties.

59.1.4 The award of the Sole Arbitrator shall be final and binding on the parties and unless directed / awarded otherwise by the Sole Arbitrator

3.5 On account of there being no response for appointment of an arbitrator to resolve the disputes as demanded under communication dated 06.03.2019, which was not replied to by the Respondent, petitioner has approached this Court by filing this petition.



2022:GUJHC:5402

4. Having heard the learned Advocates appearing for the parties, this Court is of the considered opinion that present petition require to be examined in the limited scope, as to whether the contention of the Respondent, which is to the effect that the arbitration proceedings is to be held at Delhi or at Vadodara, as claimed by the Petitioner.

4.1 It would be apt to notice at this juncture, itself, that under Clause-59.1.4, it was initially agreed between the parties that venue of arbitration proceedings would be at New Delhi. In this background, it was also agreed between the parties that all the matters relating to the Contract shall be subject to the exclusive jurisdiction of the Courts, situated in the State of Delhi.

4.1.1 However, Contract came to be amended and parties are *ad idem* on this issue, as is evident from a communication from the GAIL, Dated: 17.10.2014 (Annexure-F), whereunder, parties agreed that the jurisdiction of the Court, as reflected under Clause-59.1.6 would be at Vadodara in substitution to Delhi. However, there was no change with regard to the venue of the arbitration. When the parties had initially agreed that Courts at Delhi would be having jurisdiction and later on, substituted the same to the Courts at Vadodara, at the instance of the Respondent, since the entire business of GAIL was acquired by M/s. Vadodara Gas Limited (hereinafter, 'VGL'), i.e. the sole Respondent herein and the



2022:GUJHC:5402

office of the Respondent is also located in Vadodara, which is not seriously disputed by the learned Counsel Mr. Vishwas Shah appearing for the said Respondent and the work, which was entrusted to the petitioner under the subject Contract, Dated: 16.05.2014, was also for the Vadodara city and the fact that the petitioner is also from Vadodara, it would be apt and appropriate, if, the arbitration proceedings being held at Vadodara, itself.

4.2 Hence, the contention of the learned Advocate Mr. Vishwas Shah appearing for the Respondent that the arbitration proceedings are to be held in New Delhi cannot be accepted. Said contention stands rejected.

4.3 Thus, only issue that would remain for consideration by this Court is as to whether, an arbitrator is required to be appointed as agreed between the parties under the Arbitration Clause-59.0 extracted herein above. The answer will have to be in affirmative, as the parties were *ad idem* to the fact that disputes arising out of the contract, Dated: 16.05.2014, should be resolved by taking recourse to the Arbitration Proceedings and this fact is not being seriously disputed by the Respondent also. Thus, an arbitrator requires to be nominated, as prescribed under Clause-59.1.4, as referred to herein above.

5. For the reasons aforestated, this Court proceeds



to pass the following order;

O R D E R

(i) IAAP Nos. 96 of 2019 is **allowed**.

(ii) Shri. Justice Anil R. Dave, Judge (Retired), Supreme Court of India, is hereby **appointed** as the Sole Arbitrator to resolve the disputes between the parties in accordance with the Arbitration Center (Domestic and International), High Court of Gujarat Rules, 2021. The parties would also be bound by said Rules.

(iii) Registry is directed to communicate this order to the sole Arbitrator by speed post, **forthwith**.

(ARAVIND KUMAR, CJ)

UMESH/-