

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
ARBITRATION PETITION (CIVIL) NO. 26 of 2020

SGEPL Infrastructure Pvt. Ltd. (Formerly
Satish Goel Enterprises Pvt. Ltd.) Petitioner(s)

Versus

IND Synergy Limited & Ors. Respondent(s)

ORDER

1. The petitioner is before this Court in this petition filed under Section 11(6) of the Arbitration and Conciliation Act, 1996 ('Act 1996', for short), seeking appointment of an Arbitrator to resolve the dispute between the parties. Notice was issued to the respondents on 15.10.2020. Though respondent No.1 has entered appearance and filed its counter affidavit opposing the petition, the remaining respondents have not chosen to appear and oppose the petition.

2. In that light we have heard the learned counsel appearing for the petitioner, the learned senior counsel appearing for

respondent No.1 and perused the petition papers.

3. The transaction between the parties is stated to have emanated when the respondent No.1 approached respondents No. 2 and 3 relating to certain investment in the ongoing steel and power plant expansion. In that regard, a suit was stated to have been filed before the High Court of Judicature at Bombay in Suit No.1916 of 2010. Thereafter a subrogation agreement dated 05.09.2013 was entered into between the petitioner and respondent No.1, in which the petitioner is stated to have been substituted/subrogated in place of respondents No. 2 and 3. Pursuant thereto, a third-party intermediary agreement dated 12.09.2013 is entered into between the parties relating to which, the dispute has arisen. Since respondents No.2 and 3 are based in Singapore and are foreign entities, the petitioner has invoked the jurisdiction of this Court to seek appointment of an arbitrator.

4. As noted, dispute regarding which the appointment of an Arbitrator is sought for in this petition is contended to have arisen under the third-party intermediary agreement dated 12.09.2013. Since the said agreement contains an arbitration

clause, the petitioner has sought to invoke the same and seeks for resolution through arbitration. Clause 10 of the said agreement reads as hereunder: -

“10. GOVERNING LAW AND ARBITRATION

(i) This Agreement and its performance shall be governed by and construed in all respects in accordance with the laws of the Republic of India.

(ii) Any dispute relating to this Agreement shall be resolved by arbitration. The arbitration shall be in accordance with the provisions of the Arbitration & Conciliation Act, 1996.

(iii) All proceedings of such arbitration shall be in the English language. The venue of the arbitration shall be Mumbai.

(iv) The Arbitrator shall be appointed by consent of the Parties, failing to agree upon appointment of the Sole Arbitrator, the aggrieved party shall have recourse to appointment procedure as laid down by Arbitration & Conciliation Act, 1996.

(v) The Parties shall equally share the costs of the arbitrator's fees, but shall bear the costs of their own legal counsel engaged for the purposes of the arbitration. The Parties agree that the arbitrators appointed pursuant to this Clause shall have the right to apportion cost. Arbitration awards rendered shall be final, binding and shall not be subject to any form of appeal.

(vi) This Agreement has been accepted and executed by the Parties at Mumbai and subject to what is stated above, the Courts in Mumbai shall have exclusive jurisdiction over any matter arising out of or concerning this Agreement.”

5. In view of the same, the petitioner addressed a notice dated 30.06.2020 proposing the name of the sole Arbitrator to resolve the dispute between the parties. The respondent No.1 through the reply dated 11.07.2020 had opposed the appointment as

sought by disputing the claim. Even otherwise the Arbitrator proposed by the petitioner was not acceptable to respondent No.1. It is in that light, the petitioner had initially filed a petition before the High Court but having withdrawn the same considering it is an international arbitration, the above petition was filed.

6. The respondent through their counter affidavit while disputing the claim of the petitioner on merits has also *inter alia* contended that the disputes whatsoever had arisen between the parties, had been amicably settled by entering into a settlement dated 06.04.2018. As such, it is contended that there is no dispute subsisting between the parties to be referred to Arbitration. Though such contention is put forth on behalf of respondent No.1, the learned counsel for the petitioner has in fact disputed such settlement between the parties. In that view, it would not be appropriate for this Court to enter into merits of the nature of the dispute that had arisen between the parties and as to whether the same had been settled or not. These are aspects which are to be considered by the learned Arbitrator based on the contentions to be put forth therein.

7. Insofar as the instant petition, we note that the parties herein are the parties to the third-party intermediary agreement dated 12.09.2013 where under the dispute is stated to have arisen and such agreement provides for the resolution of disputes through arbitration. In that view, we find it appropriate to allow the petition and appoint a learned Arbitrator to resolve the dispute between the parties. All contentions of the parties are left open to be urged before the learned Arbitrator.

8. Accordingly, Shri Justice Dilip B Bhosale, Former Chief Justice of Allahabad High Court, No.6, Ground Floor, 79, Bhagayodya Building, Nagindas Master Road, Mahatma Chowk, Mumbai-400001 is appointed to act as the sole Arbitrator to resolve the disputes between the parties in terms of the provisions contained in Act 1996.

9. The Arbitration Petition is accordingly allowed.

10. Pending application, if any, stands disposed of.

.....**J.**
(A. S. BOPANNA)

.....**J**
(BELA M. TRIVEDI)

New Delhi;
December 09, 2022

ITEM NO.58

COURT NO.13

SECTION XVI-A

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Petition(s) for Arbitration (Civil) No. 26/2020

SGEPL INFRASTRUCTURE PVT. LTD.

(FORMERLY SATISH GOEL ENTERPRISES PVT. LTD.)

Petitioner(s)

VERSUS

IND SYNERGY LIMITED & ORS.

Respondent(s)

Date : 09-12-2022 This petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE A.S. BOPANNA

HON'BLE MS. JUSTICE BELA M. TRIVEDI

For Petitioner(s) Mr. Viresh B. Saharya, AOR
Mr. Gaurav Mahajan, Adv.
Mr. Akshat Agarwal, Adv.

For Respondent(s) Mr. Nikhil Naiyar, Sr. Adv.
Mr. Susmit Pushkar, AOR
Mr. Anchit Oswal, Adv.
Mr. Gaurav Sharma, Adv.

UPON hearing the counsel the Court made the following
O R D E R

The arbitration petition is allowed in terms of the signed
order.

Pending application(s), if any, shall stands disposed of.

(SNEHA DAS)
SENIOR PERSONAL ASSISTANT

(DIPTI KHURANA)
ASSISTANT REGISTRAR

(Signed order is placed in the file)