

IN THE SUPREME COURT OF INDIA
ORIGINAL JURISDICTION

ARBITRATION PETITION NO. 25 OF 2011

M/S.FUGRO SURVEY (INDIA) PVT. LTD.

Petitioner(s)

VERSUS

RAMUNIA INTERNATIONAL SERVICES LTD.

Respondent(s)

O R D E R

1. This petition has been filed under Section 11(6) of the Arbitration and Conciliation Act, 1996 read with paragraph 3 of the Scheme framed by Hon'ble the Chief Justice of India under Section 11(10) of the said Act for appointment of sole arbitrator.

2. Despite service of notice, none appears on behalf of the respondent.

3. The petitioner and the respondent had entered into a Survey Contract on 8.4.2008 whereby the petitioner agreed to perform various survey for the

respondent as per terms and conditions of payment prescribed under the said agreement. The survey was necessary for the performance of the tasks in the Main Contract.

4. The petitioner was a Sub-Contractor under the respondent having necessary expertise, capabilities and technical know-how to perform the works required by the Contractor i.e. the respondent herein, for providing adequate equipment and personnel for such work. The specified work which was required to be done by the sub-contractor is contained in various Articles of the aforesaid Survey Contract. Article 14 of the Survey Contract, which provides for the mechanism for resolution of any dispute that may arise between the parties through arbitration, reads as under:

"Article 14 – Arbitration/Law

14.1 This contract shall be governed by the laws of the Republic of India.

14.2 Any dispute between the parties arising in, under or out of this Contract, unless otherwise amicably settled, shall be resolved by arbitration in Mumbai, India in

accordance with the Rules of conciliation and Arbitration Act, 1996 or any subsequent rules or amendments thereof. The decision of/by the arbitrator shall be final and binding upon both parties."

5. It appears that disputes have arisen between the parties. It is the claim of the petitioner that the geographical survey was completed 100% and they were carrying out Soil Sampling using drop core which was completed to the extent of 53.8%. The petitioner raised Invoice No.INV-MAR-08-02/03/409 dated 15th July, 2008 in the sum of USD 565614.98 for the work done and thereafter vide letter dated 24th July, 2008 reminded the respondent for payment but there was no response from the respondent. Subsequently, a legal notice was sent to the respondent on 14.2.2009 calling upon the respondent to make the payment of the aforesaid amount together with interest at the rate of 12% per annum from the date of each invoice till the date of payment.

6. In spite of the legal notice dated 14.2.2009, no payment was received by the petitioner. Hence the

petitioner issued legal notice dated 8.12.2010 invoking the arbitration clause. The petitioner also proposed to appoint one Mr. Pawan Aggarwal as the Arbitrator. The respondent, however, failed and neglected to confirm the appointment of the aforesaid Arbitrator. In fact, no reply to the aforesaid legal notice has been received by the petitioner. Therefore, the petitioner moved an Arbitration Petition No.118 of 2011 in the High Court of Judicature at Bombay seeking appointment of an arbitrator. When the aforesaid petition came up for hearing before the High Court on 5.8.2011, the High Court permitted the petitioner to withdraw the arbitration petition as the petitioner would have to move this Court under Section 11(5) of the Arbitration and Conciliation Act, 1996. It was in these circumstances that the present arbitration petition has been filed before this Court.

7. The Office Report indicates that the service of notice in this matter is complete. However, in spite of the notice having been served, none appears on behalf of the respondent. The averments made in the petition have remained un-controverted.

8. In view of the above, this petition deserves to be allowed and accordingly the arbitration petition is allowed. I hereby appoint Mr. Justice Arvind V. Savant, former Chief Justice of the Kerala High Court, (residing at A/20, Marble Arch-A, 9, Prithvi Raj Road, New Delhi-110011) as the sole Arbitrator.

9. The learned arbitrator shall be at liberty to fix his own remuneration and any other terms and conditions for the arbitration as deemed fit and proper, at his sole discretion. The seat of the arbitration shall be in Mumbai.

10. Let a copy of this order be communicated to the learned Arbitrator so that he may enter upon reference as expeditiously as possible.

.....J
(SURINDER SINGH NIJJAR)

New Delhi;
September 7, 2012.