

Court No. - 46

Case :- ARBITRATION AND CONCILI. APPL.U/S11(4) No. - 55 of 2023

Applicant :- M/S Dharamraj Contracts (India) Pvt. Ltd.

Opposite Party :- Ghaziabad Development Authority And Another

Counsel for Applicant :- Pranab Kumar Ganguli, Parth Gupta

Counsel for Opposite Party :- Ravi Prakash Pandey, Satendra Tirpathi

Hon'ble Ashwani Kumar Mishra, J.

1. This petition has been filed with a prayer to appoint an arbitrator on the ground that there exists an arbitration agreement between the parties and a dispute has now arisen between them.

2. Applicant was awarded contract for construction of certain building by the respondent authority and the tenders documents specifically contains Clause-32 and 33 providing for reference of dispute to arbitration. Learned counsel submits that the named Arbitrator as per clause-33 is the Vice Chairman but in view of the amendment incorporated in Section 12 (5) of the Act of 1996, the officer of the authority cannot act as an Arbitrator. Demand has also been made for appointment of Arbitrator in the matter.

3. A counter affidavit has been filed in which existence of arbitration agreement between the parties is not in dispute. It is, however, stated in para 11 that the entire amount payable has been released to the applicant and that a no-dues certificate has also been given by the applicant. The counter affidavit however does not accompany any such certificate of no-dues.

4. A rejoinder affidavit has been filed on behalf of the applicant stating that claim of the applicant has not been settled so far and various amounts are still due payable to it. The applicant has also denied issuance of any no dues certificate. It is submitted that certain signatures have been obtained on blank proforma by the authority even before release of payment which cannot be construed as no dues certificate by the applicant.

5. Be that as it may, it is clearly reflected from the record that there exists an arbitration agreement between the parties.

6. Issuance of such no dues certificate is otherwise disputed by the applicant.

7. All such issues, therefore, can be gone into by the Arbitrator at the first instance.

8. In such circumstances, this application for appointment of Arbitrator succeeds and is allowed.

9. Accordingly, Hon'ble Mr. Justice Pankaj Kumar Jaiswal (Former Judge), R/o C-56, Defence Colony, New Delhi, Mobile No.09425155450, is appointed as an Arbitrator to enter upon the reference and adjudicate the dispute in accordance with provisions of Arbitration and Conciliation Act, 1996, subject to his consent in terms of section 11-A of the Arbitration and Conciliation Act.

10. The Arbitrator shall be entitled to fees, in accordance with the provisions of fourth schedule inserted by Act No.3 of 2016. The expenses shall be borne equally by the parties.

Order Date :- 12.10.2023

Kumar Manish.