

\$~1

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **ARB.P. 243/2016**

VISHAL ENTERPRISES

..... Petitioner

Through: Mr Ashish Virmani, Mr Shrey
Chathly, Mr Bandara Grover and Mr
Priyank Mangal, Advocates.

versus

UNION OF INDIA

..... Respondent

Through: Ms Sunieta Ojha, Advocate.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER

%

17.08.2016

1. This is a petition filed under Section 11 of the Arbitration and Conciliation Act, 1996 (hereafter 'the Act'). It is stated that in or around 2013, the respondent invited tender for "Addn/altn to SMQs & OMQs at AF Station at Chandigarh under GE (AF) South, Palam Delhi Cantt."
2. The petitioner participated in the said tender and submitted its bid, which was accepted by the respondent by an acceptance letter dated 8277-22/18/E8 dated 06.08.2013. The petitioner states that certain disputes have arisen in relation to the aforesaid contract and even though the petitioner has completed the works that were awarded, the petitioner has not been paid the amount due.
3. The learned counsel appearing for the petitioner has referred to clause

70 of the General Conditions of Contract (IAFW-2249) which contains the Arbitration clause and reads as under:-

"70. Arbitration.- All disputes, between the parties to the Contract (other than those for which the decision of the C.W.E. or any other person is by the Contract expressed to be final and binding) shall, after written notice by either party to the Contract to the other of them, be referred to the sole arbitration of an Engineer officer to be appointed by the authority mentioned in the tender documents.

Unless both parties agree in writing such reference shall not take place until after the completion or alleged completion of the Work or termination or determination of the Contract under Condition Nos. 55, 56 and 57 hereof.

Provided that in the event of abandonment of the Works or cancellation of the Contract under Condition Nos. 52, 53 or 54 hereof, such reference shall not take place until alternative arrangements have been finalized by the Government to get the Works completed by or through any other Contractor or Contractors or Agency or Agencies.

Provided always that commencement or continuance of any arbitration proceeding hereunder or otherwise shall not in any manner militate against the Government's right of recovery from the contractor as provided in Condition 67 hereof.

If the Arbitrator so appointed resigns his appointment or vacates his office or is unable or unwilling to act due to any reason whatsoever, the authority appointing him may appoint a new Arbitrator to act in his place.

The Arbitrator shall be deemed to have entered on the reference on the date he issues notice to both the parties, asking them to submit to him their statement of the case and pleadings in defence.

The Arbitrator may proceed with the arbitration, *ex parte*,

if either party, inspite of a notice from the Arbitrator fails to take part in the proceedings.

The Arbitrator may, from time to time with the consent of the parties, enlarge, the time upto but not exceeding one year from the date of his entering on the reference, for making and publishing the award.

The Arbitrator shall give his award within a period of six months from the date of his entering on the reference or within the extended time as the case may be on all matters referred to him and shall indicate his findings, along with sums awarded, separately on each individual item of dispute.

The venue of Arbitration shall be such place or places as may be fixed by the Arbitrator in his sole discretion.

The award of the Arbitrator shall be final and binding on both parties to the Contract."

4. The petitioner invoked the arbitration clause by its letter dated 28.12.2015 which was thereafter followed by further communications. However, since the Arbitrator was not appointed, the petitioner has filed the present petition.
5. Despite sufficient opportunities, the respondent has not filed any reply to this petition. The learned counsel appearing for the respondent does not dispute that the disputes between the parties are to be resolved through arbitration. However, she states that since the petitioner has not completed the works, the stage for invocation of the arbitration has not arisen.
6. The aforesaid contention is disputed by the learned counsel for the

petitioner who points out that in terms of the arbitration clause, a reference to arbitration is not to be made until after “completion or alleged completion of work”. He submitted that it is the petitioner's case that it has completed the works awarded and, thus, there is no bar for referring the disputes to arbitration. He further referred to a letter dated 28.12.2015 and drew the attention of this Court to paragraph 3 of the said letter which clearly indicates the stand of the petitioner that the petitioner has completed the works assigned.

7. In the aforesaid circumstances, the contention that the disputes cannot be referred to arbitration, at this stage, is without merit.

8. Accordingly, it is directed that an Arbitrator be appointed under the Rules of the Delhi International Arbitration Centre (DAC). The representatives of the parties shall appear before the co-ordinator, DAC on 26.09.2016 at 11:00 a.m. The arbitration shall be conducted under the aegis of DAC and in accordance with its Rules.

9. The petition is disposed of.

VIBHU BAKHRU, J

AUGUST 17, 2016
RK