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

% ***Order delivered on: 24th May, 2016***

\+ **Arb. P. No.194/2015**

KALA NIYOJAN & ASSOCIATES ..... Petitioner
Through Mr.G.S.Bagga, Mr.S.S.Tripathy, Mr.Bharti Pawar Tripathy, Advs.

versus

DELHI CARGO SERVICE CENTRE PVT. LTD. THROUGH ITS DIRECTOR & ORS ..... Respondents
Through Mr.Hardik Luthra, Adv.

CORAM:
HON'BLE MR.JUSTICE MANMOHAN SINGH

MANMOHAN SINGH, J. (ORAL)

1. The petitioner has filed the present petition under Section 11(5) of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as the 'Act') for appointment of an Arbitrator.

2. Brief facts of the case as per the petition are that in June, 2011 respondent No.1 pursuant to Concession Agreement, granted by DIAL (Delhi Airport Authority Limited), was in need of the contractors for undertaking the business of construction and supervisory services and other allied for one of its site being Greenfield Air Cargo Terminal ("Cargo Terminal") spread over approximately 7000 Sq. Mts. situated at the Indira Gandhi International Airport, (hereinafter referred to as "said Site").

3. The respondent No.1 approached the petitioner and an Agreement for construction of office space for the said site was executed by and between respondent No.1 signed by respondent No.2 on its behalf and petitioner Firm on 11th July, 2011. The petitioner firm

had worked on the said site for a period from the year 2011 to 2013 and had completed the entire project as per the stipulated terms of the said Agreement.

4. As per clause 10.5 of the said agreement they were allotted with space of around 112 Sq. Mts. area on the said site in order to keep their raw material and other belongings.

5. The petitioner claimed that they are the owner of the goods lying with respondents worth more than Rs.47 lacs, that as per the aforesaid pattern they have till date issued 22 invoices all against the Purchase Orders as raised by respondent No.1, out of which the payment of 10 invoices have been cleared by respondent No.1 subject to holding 5% of the total amount of the each invoices therefore, the retention amount is obtained from undisputed invoices raised by the petitioner.

6. The petitioner says that as on April, 2015 the aggregate retention amount of Rs.36,99,377.06/- is due and payable to petitioner by respondents (hereinafter referred to as "said Retention Amount")as the same is evident from the letter dated 25th September, 2013 issued by Account Department of the said respondents.

7. The respondents have failed to settle the claims/bills/dues of the petitioner though the same was verified/settled by account Department of respondents up to May, 2014 as per the case of the petitioner.

8. Mr.Rajendra Sawant being partner in petitioner's firm had personally met respondents No.2 and one Mr.Shobit Shukla being one of the employees of respondent No.1 so as to address on the said dispute pertaining to release of said retention amount, possession of said goods and imbursement of said invoices but the same was never

taken of serious note by the respondents. Further he has also addressed a letter dated 4th December, 2014 on this dispute, to which a meeting on 18th November, 2014 was arranged, however, inspite of those efforts, respondents No.2 to 4 failed to comply the requisites mentioned in the letter dated 4th December, 2014. The contents of the said letter are reproduced here as under:-

> "Sub: Settlement of bills in arrears by DCSC and Release of retention amount as retained by DCSC towards M/s Kalaniyojan & Associates.
>
> Sirs,
>
> Attention Mr. Venu Bangara
>
> We regret to address you with the present letter considering our past relationship, however due to the circumstances beyond our control we are forced to address you with the same. The present letter is regarding the business that we had done at DCSC, Delhi and pertaining to huge arrears of bills and retention amount pending with your company towards our firm M/s Kalaniyojan & Associates.
>
> We M/s. Kala Niyojan & Associates a Partnership Firm are mainly engaged in the business of architecture, interior designing and furnishing of various kinds of properties for our clients as contractors. We bear the ties with Your Company since last 17 years and we take this opportunity to say that same has been fruitful for both the ends.
>
> We say that our firm M/s Kalaniyojan & Associates was appointed by your esteemed institute for the project of Interior & Furnishing works for one of your sites being Delhi Cargo Service Center, (DCSC) and accordingly an Agreement for construction of Office space Terminal 1 at the Indira Gandhi International Airport, New Delhi dated 19th July 2011 was executed.
>
> We have been abiding with all the terms of the aforementioned Agreement as stipulated and we do expect the same from your end. We further state that the total cost borne by our firm for furnishing the said terminal has been to a tune of Rs. 8 Crores till date. Various bills have been raised to that effect by our firm in favour of your

Company (DCSC). We however regret to inform you that many of our claims/bills/dues have not been settled by Accounts Department of your company for a period from ____(month) 2012 to _____(month) 2012. It is pertinent to note that even at the final stage of bill finalization your company had demanded the rate Analysis against some of our submitted bill and same was compiled from our end.

We would also like to bring to your notice the fact that your company has seized the Retention amount of Rs.36,99,377.06/- even after the period of 2 years and same is also confirmed from your company Account Department (Dy. Financial Controller). The copy of the Confirmation Letter for Outstanding Retention Amount is also attached for the reference. Thereby the total outstanding amount due and payable by your company is Rs.97,73,510.61/- including the bill amounts.

We inform you that the last payment that we had received from your end has been a sum of Rs.2,14,523/- Via RTGS in our SBI Bank Account on 16/5/2013 after which we have not received clearance of single bill. We place on record that as on today the outstanding amount due and payable by your company upon our firm is Rs.97,73,510.61/- and same has been even admitted by one Mr. Sohaib Shukla being your representative which includes the bills.

We also regret to inform you that our site supervisors were stationed to your sites since past 2 years and they used to remind your representatives for clearing of the said bills not only that they have also addressed and satisfied your queries with respect to DCSC & completed finishing work as per your requirements, inspite of that there has not been any response for clearing of the said bills from your end and same is very fateful.

We state that the abovementioned bills due for clearance are pending for a period of more than 2 years from your end and due to which our money has been blocked to a tune of Rs.97,73,510.61/-. We have repeatedly tried our level best to bring this issue in your notice and that Mr. Rajendra Sawant a partner of our firm has personally visited Delhi to your site office and have met Mr. Sohaib Shukla and Mr. Anil Jaiswal on number of occasions for settling our claims once and for all.

We state that one such meeting was held on 12/11/2014 for final bill settlement with Mr. Sohaib Shukla, being the representative of your company that in the said meeting Mr. Sohaib Shukla admitted outstanding sheets contemplating the amount as due and liable to be paid by your by Mr. Sohaib Shukla being the representative of your company. It is pertinent to note that said meeting was pre planed, fixed and confirmed from your end as well by one Mr. Sohaib Shukla for final settlement of the said bills but once again your account person after having discussions for about 2 hours and confirming the liability of your company towards the aforesaid bills request Mr. Sawant to continue with the met on next date for some silly reasons and Mr. Sawant was shocked to learn on the next date being 13/11/2014 that said Mr. Sohaib Shukla has not even turned to the office and he was on leave, which clearly demonstrates a very shallow approach from your end.

We further place on record that as on today our 23 bills are pending for finalization of which 9 Bills are already taken & passed on file and forwarded to accounts department for finalization on 30/5/2014. The said 9 bills bear sign of the receiving officer who acknowledged the same. We say that we are shocked to learn that inspite of there being clearance on the said bills the accounts department has denied the encashment of the said bills for the reasons best known to them.

We regret to inform you that we are facing major monetary issues due to this careless and irresponsible behaviour from your end as our major amounts are blocked with you and hence we cannot pay our pending dues to our contractors and subcontractors on regular basis and in certain cases the vendors have also stopped working at other sites which affects our prestige and reputation in the market.

IN THE PREMISE AS AFORESAID You are also requested to allow our representatives to remove the articles and materials as annexed herewith form removing from the site. You are requested to do the needful and release our outstanding dues to a sum of Rs.97,73,510.61 including our bills and retention amount within 10 days of the receipt of this letter. In alternative you are also requested to fix up

> a meeting for any clarifications needed from our end. Kindly consider present letter as a last and final reminder-cum-demand letter for clearance of our bills as well as retention amount and permission to remove our materials lying in your custody upon failing to comply on the same, we shall be forced to initiate legal action against your company however we do not wish to do so.
>
> Kindly acknowledge, awaiting for a positive and fruitful outcome from your end.
>
> Yours faithfully,
>
> Sd/-
> For Kala Niyojan & Associates
> Authorized Signatory"

9. Learned counsel for petitioner ultimately issued notice dated 27th January, 2015 to the respondents for invoking arbitration clause being Clause 11.8.2 of the said Agreement to refer the dispute and differences to Arbitrator. However, no reply was given to the said notice by the respondents. The Advocate of petitioner again sent reminder notice dated 18th February, 2015 to the respondents.

10. The respondents sent a short reply to the said notice dated 27th January, 2015 and asked for time to give a detailed reply to said notice. But no positive response or proper reply of disputes was received by the petitioner from the respondents. Therefore, then present petition has been filed.

11. Reply has been filed by the respondents. On merits, the respondents have disputed the claims of the petitioner. During the arguments, the only issue raised by the respondent is that the petitioner-firm is unregistered. Therefore, the claims are barred under Section 69 of the Partnership Act, 1932. The respondents have given the complete reply which is concealed by the petitioner and in the

agreement it is mentioned that it is a company and not a firm therefore, the petition is liable to be dismissed.

12. The execution of agreement and disputes arising between the parties are not denied by the respondent. The petitioner's counsel has rightly pointed out that the petitioner's firm was never incorporated as a company. It was merely a typing mistake occurred in the agreement. Otherwise the respondent from the very beginning was aware that it was a partnership firm.

13. In view of the above, the prayer made in the petition is liable to be allowed. Ordered accordingly.

14. Accordingly, Ms. Justice Aruna Suresh, retired Judge of this Court (Mobile No.9560044401) is appointed as sole Arbitrator to adjudicate the disputes between the parties. The parties are also allowed to file their respective claims and counter-claims before the Arbitrator. Liberty is granted to the respondent to raise all the grounds as mentioned in the reply to the petition.

15. The Arbitrator shall ensure the compliance of the provisions of Arbitration and Conciliation (Amendment) Act, 2015 before commencing the arbitration. The fees of the learned Arbitrator shall be paid as per schedule of the Amended Act.

16. The petition is accordingly disposed of.

17. No costs.

18. Copy of this order be given *dasti* to the learned counsel for the parties and a copy thereof be delivered to the learned Arbitrator forthwith.

(MANMOHAN SINGH)
JUDGE

MAY 24, 2016