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

+ **ARB.P.211/2017**

Date of decision : 30th October, 2017

INNOVATORS FACADE SYSTEMS PVT LTDPetitioner

Through Mr. S.Ravi Shankar, Ms.
Yamunah Nachiar and
Ms.Bhanu Kapoor, Advs.

versus

AIRPORT AUTHORITY OF INDIARespondent

Through Mr. Digvijay Rai and Mr. Pulkit
Tyagi, Advocates

CORAM:

HON'BLE MR. JUSTICE NAVIN CHAWLA

NAVIN CHAWLA, J. (Oral)

1. The dispute between the parties have arisen under the work order dated 14.11.2011. The said work order contains a dispute resolution clause/arbitration work order in form of Clause 25. The same is reproduced hereinbelow:-

“CLAUSE 25

Except where otherwise provided in the contract, all questions and disputes relating to the meaning of the specifications, design, drawings and instruction here-in before mentioned and as to the quality of workmanship

or materials used on the work or as to any other question, claim, right, matter or thing whatsoever, in any way arising out of or relating to the contract, designs, drawings, specifications, estimates, instructions, orders or these conditions or otherwise concerning the work or the execution or failure to execute the same whether arising during the progress of the work or after the cancellation, termination, completion or abandonment thereof shall be dealt with as mentioned hereinafter:

*(i) **Through Dispute Resolution Committee:** Any dispute as stated above shall be referred in the first place to the Dispute Resolution Committee (DRC) appointed by the Executive Director/Member (Planning)/Chairman, Airports Authority of India.*

It is also a term of contract that fees and other expense if payable to DRC shall be paid equally by both the parties i.e. AAI and Contractor.

Unless the contract has already been repudiated or terminated, the contractor shall, in every case, continue to proceed with the work with all due diligence.

It is also a term of contract that if the contractor does not make any demand for Dispute Resolution Committee in respect of any claim in writing within 90 (Ninety) days of receiving the intimation from the AAI that the bill is ready for payment, the claim of contractor(s) will be deemed to have been waved and absolutely barred and the AAI shall be discharged and released of all liabilities under the contract in respect of these claims.

*(ii) **Adjudication through Work order:-** Except where the decision has become final, binding and conclusive in terms of Sub Para (i) above, disputes or differences shall be referred for adjudication through arbitration by a sole arbitrator appointed by the Member (Planning)/Chairman, AAI. If the arbitrator so appointed is unable or unwilling to act or resigns his appointment or vacates his office due to any reason whatsoever, another sole arbitrator shall be appointed in the manner aforesaid. Such person shall be entitled to proceed with the reference from the stage at which it was left by his predecessor.*

It is also a term of contract that if the contractor does not make any demand for appointment of Arbitrator in respect of any claim in writing within 120 (One Hundred Twenty) days of receiving the decision/award from Dispute Resolution Committee, the claim of contractor(s) will be deemed to have been waved and absolutely barred and the AAI shall be discharged and released of all liabilities under the contract in respect of these claims.

It is term of this contract that the party invoking arbitration shall give a list of disputes with amounts claimed in respect of each such disputes along with the notice for appointment of arbitrator and giving reference to the rejection of their claims by the Dispute Resolution Committee.

It is also a term of this contract that no person, other than a person appointed by above mentioned appointing authority, should act as arbitrator and if for any reason that is not possible, the matter shall not be referred to arbitration at all.

The arbitration shall be conducted in accordance with the provisions of the arbitration and Conciliation Act, 1996 (26 of 1996) or any statutory modification or re-enactment thereof and the rules made thereunder and for the time being in force shall apply to the arbitration proceeding under this clause.

It is also a term of this contract that the arbitrator shall adjudicate on only such disputes as are referred to him by the appointing authority and give separate award against each dispute and claim referred to him and in all cases where the total amount of the claims by any party exceeds Rs. 1, 00,000/-, the arbitrator shall give reasons for the award.

It is also a term of the contract that if any fees are payable to the arbitrator, these shall be paid equally by both the parties.

It is also a term of the contract that the arbitrator shall be deemed to have entered on the reference on the date he issues notice to both the parties calling them to submit their statement of claims and counter statement of claims. The venue of the arbitration shall be such place as may be fixed by the arbitrator in his sole discretion. The fees, if any, of the arbitrator shall, if required to be paid before the award is made and published, be paid half and half by each of the parties. The cost of the reference and of the award (including the fees, if any, of the arbitrator) shall be in the discretion of the arbitrator who may direct to any by whom and in what manner, such costs or any part thereof shall be paid and fix or settle the amount of costs to be so paid."

2. It is the stand of the respondent that after execution of the work, the final bill of the petitioner in respect of BOQ Items stood paid to the petitioner by the respondent on 3rd March, 2014. It was only vide letter dated 21st April, 2015 i.e. after the period of 90 days that the petitioner raised the dispute and sought reference to the arbitration.

3. It is, therefore, contended that in terms of Clause 25(i) of the work order, the claim of the petitioner has to be deemed to be waived and cannot be referred to work order.

4. On the other hand, the petitioner submits that there was no 'intimation from the respondent' that the final bill is ready for payment and therefore, invoking the provisions of clause 25(i) of the agreement, is not correct.

5. Be that as it may, the respondent does not deny the existence of the Arbitration Agreement as also the invocation thereof by the petitioner.

6. The question as to the effect of clause 25(i), the legal validity thereof and whether the same debarred the petitioner from maintaining its claims in the facts of the present case, are matters left to be best decided by the arbitrator.

7. Counsel for the respondent has brought to my notice that earlier orders of this Court in Work order Petition Nos. 360/2016 titled ***B.L. Kashyap & Sons Ltd. vs. Airport Authority of India*** and 620/2016 titled ***M/s KMB-ERA(JV) vs. Airport Authority of India***, taking similar view, have been challenged by the respondent before the

Supreme Court by way of Special Leave Petition (Civil) No. 4924-4925/2017 titled *Airport Authority of India vs. M/s KMB-ERA(JV)* and the said proceedings are pending disposal. He further submits that these petitions are likely to be listed on 29th November, 2017. It is however, admitted that there is no stay granted by the Supreme Court on the arbitration proceedings pursuant to the order passed by this Court.

8. In view of the above, I see no merit in the contention raised by learned counsel for the respondent and direct the parties to appear before the Delhi International Arbitration Centre (DAC) on 14th November, 2014 at 2.00 PM. The DAC shall appoint a sole Arbitrator for adjudication of the dispute between the parties. The proceedings and fee of the learned Arbitrator will be in terms of the Rules of DAC.

9. The present petition is disposed of in the above terms with no order as to costs.

NAVIN CHAWLA, J

OCTOBER 30, 2017

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