

\$~OS-7

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

+ ARB.P. 426/2017

PREM CONSTRUCTION COMPANY Petitioner
Through Mr.Ankit Gupta, Adv.

versus

UNION OF INDIA & ORS. Respondents
Through Mr.Sarat Chandra, Adv.

CORAM:
HON'BLE MR. JUSTICE JAYANT NATH

ORDER

%

21.09.2017

1. This petition is filed under Section 11(6) of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as the Act) seeking appointment of an independent arbitrator to adjudicate the disputes between the parties. It is the case of the petitioner that on 23.01.2015, respondent No.3 awarded to the Petitioner the work of Periodical Services of certain buildings of Zone A and B at KWC Area under AGE (I) R& D Delhi. The approximate value of the work was Rs.9,38,235/-. The date of commencement of the work was 05.02.2015 and completion was 04.08.2015. Disputes having arisen between the parties, the petitioner has invoked the arbitration clause on 19.04.2017.

2. Learned counsel for the respondents has entered appearance. He has filed his reply. He opposes the appointment of the Arbitrator stating that in terms of the arbitration clause, the parties have to first try and carry out

conciliation proceedings which the petitioner has failed to do despite several communications carried out by the respondent.

3. The arbitration clause, namely, clause 70 of the GCC reads as follows:-

“Clause 70 of General Condition of Contract

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 [Serving Officer having degree in Engineering or equivalent or having passed final/direct final Examination of sub-Division II of Institution of Surveyor (India) recognized by the Govt. of India] 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 Works 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 finalised 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.

.....”

4. In the course of the arguments, learned counsel for the respondent also submits that the reference cannot take place till the completion or alleged completion of the work. He submits that the work is not complete and hence, the reference to arbitration cannot take place.

5. As per the said arbitration clause, the reference shall take place after completion or alleged completion of the work. The phrase “alleged completion of the work” would necessarily include a claim for completion made by either of the parties. In the present case, it is the case of the petitioner that the work is completed as stated in his arbitration petition.

6. I may note that under Section 11(6A) of the Amended Act, the court has to confine itself to the examination of the existence of an arbitration agreement.

7. I may also note that despite invocation of the arbitration clause, no steps have been taken by the respondent. In terms of the judgment of the Supreme Court in the case of ***Datar Switchgears vs. Tata Finance Ltd., (2000) 8 SCC 151***, the respondent have lost their right to nominate an arbitrator.

8. In any case as per the arbitration clause, the matter has to be referred to arbitration of a sole arbitrator being a serving officer having a degree of engineering or equivalent. Under Schedule 7 read with Section 12(5) of the Act, a serving officer cannot be appointed as an arbitrator. Hence, there is no other option but for this court has to appoint an arbitrator.

9. The parties are referred to arbitration under the aegis of the Delhi International Arbitration Centre (DIAC) attached to the High Court. The Centre will nominate a qualified engineer from its panel to be the sole arbitrator to adjudicate the disputes between the parties. A copy of this order

be sent to DIAC.

10. The petition stands disposed of.

11. A copy of this order be given Dasti.

JAYANT NATH, J

SEPTEMBER 21, 2017/rb