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

+ ARB.P. 809/2018

M/S D BHARDWAJ & COMPANY Petitioner
Through: Ms.Seema Singh, Adv.

versus

UNION OF INDIA, THROUGH: ITS DTE OF CONTRACT
MANAGEMENT(ARMY) & ORS. Respondents
Through: Mr.Sanjiv Kr.Saxena, Mr.R.Mishra,
Mr.Mukesh Kr.Tiwari and
Mr.Abhishek Rana, Adv.

CORAM:
HON'BLE MR. JUSTICE NAVIN CHAWLA

ORDER
% **05.12.2018**

1. This petition under Section 11 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as the 'Act') has been filed by the petitioner seeking appointment of an Arbitrator for adjudicating the disputes that have arisen between the parties in relation to the Agreement for certain repairs to external, finishes, water supply fittings and other Misc. work in building no.P-43 to P-48 in Piru Vihar in the area of AGE B/R-III, under GE (West), Delhi Cantt., New Delhi-110010 awarded by the respondents to the petitioner.
2. The Arbitration Agreement between the parties is contained in Clause 70 of the General Conditions of the Contract (GCC) and is reproduced hereinbelow:

“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, in spite 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.”

3. The disputes between the parties have arisen in relation to the claim of the petitioner that it has successfully completed the work, which is denied by the respondents.
4. Such disputes having arisen, the petitioner vide its letter dated 25.08.2018 requested the respondents to appoint an Arbitrator. Having failed to receive any response from the respondents, the present petition was filed.
5. In spite of opportunity being granted, the respondents have failed to file any response to the petition.
6. Learned counsel for the respondents submits that in terms of Clause 70 of the GCC, the disputes cannot be referred to Arbitrator until the completion of the work.
7. I cannot agree with the submission made by the counsel for the respondents. This Court in its order dated 21.09.2017 passed in Arb.P.426/2017, ***Prem Construction Company v. Union of India and Ors.***,

has considered the same Clause and has held that the phrase “alleged completion of the work” would necessarily include a claim for completion made by either of the parties. In the present case, as noted above, the petitioner is claiming completion of the work, which is denied by the respondents. Therefore, this would be a dispute to be adjudicated through arbitration.

8. Learned counsel for the respondents has further placed reliance on the Clause 49 of the GCC which *inter-alia* reads as under:

“49. Completion.-

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[On receipt of notice from the Contractor that the work has been completed, the G.E. shall within seven days certify to the Contractor the date(s) on which the items or group of items of Works are completed and taken over and the state thereof or shall notify the details of incomplete items of work to the Contractor. In case of dispute between G.E. and the Contractor over completion of work, the decision of Accepting Officer or CWE in case of G.E.'s contract shall be final and binding.]”

9. Counsel for the respondents submits that if the petitioner is aggrieved of the decision of the G.E. regarding refusal to accept the completion of the work, the remedy of the petitioner would lie in approaching the Accepting Officer or CWE. He submits that in the present case, the petitioner has failed to avail this remedy, and therefore, the arbitration cannot be invoked.

10. On the other hand, learned counsel for the petitioner has placed reliance on the letters dated 18.12.2017, 20.12.2017 and 23.12.2017 to submit that the petitioner had indeed approached the Accepting Officer as also the higher officer raising its grievances, however, failed to receive any response from them. She submits that it is only thereafter that the petitioner

invoked the Arbitration Agreement and to this notice also there was no response, as is the case with the present petition.

11. As the respondents have remained silent throughout and not responded to the above referred communications of the petitioner, to the notice invoking arbitration and also to the present petition, I see no merit in the contentions raised by the respondents. The petitioner cannot be made to wait endlessly for a decision of the respondents on its grievance.

12. In view of the above, I see no impediment in appointment of a Sole Arbitrator for adjudicating the disputes that have arisen between the parties in relation to the abovementioned Agreement.

13. With the consent of the parties, the parties are referred to the Delhi International Arbitration Centre (DIAC), where they shall appear on 21.12.2018 at 2.00 p.m. The DIAC shall appoint a Sole Arbitrator for adjudicating the disputes that have arisen in relation to the abovementioned Agreement.

14. The Arbitration and fee shall be governed by the DIAC Rules.

15. All objections of the respondents shall remain open in such proceedings.

16. The petition is allowed in the above terms, with no order as to cost.

Dasti.

NAVIN CHAWLA, J

DECEMBER 05, 2018/Arya