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IN THE HIGH COURT OF DELHI AT NEW DELHI

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ARB.P. 753/2017

ISHWAR CONSTRUCTIONS THROUGH ANIL GUPTA

..... Petitioner

Through : Mr.Sanjay Bansal, Adv.

versus

HINDUSTAN PREFAB LTD. THROUGH CHAIRMAN
CUM MANAGING DIRECTOR SERVICE EFFECTED
THROUGH GENERAL MANAGER (ENGINEERING)

..... Respondent

Through : Mr.R.Rajappa, Adv.

CORAM:

HON'BLE MR. JUSTICE YOGESH KHANNA

ORDER

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08.02.2018

This is a petition under Section 11 of the Arbitration and Conciliation Act, 1996.

It is submitted by learned counsel for the petitioner that on 24.06.1995 the Respondents accepted the offer and issued award letter to the petitioner for a tender value of Rs 8,12,500/-. The date of start & completion of work was stipulated as 24.06.95 & 23.07.95 respectively. However work was actually completed for a value of Rs 15,44,925/- on 18.03.96.

On 26.04.1996 final bill was prepared by Department under their signatures for Rs 15,44,925/- with net amount payable comes to Rs 80,054/- and security deposit as deducted comes to Rs.77,246/- as per clause 11 of agreement.

On 17.07.98 notice was issued claiming interest on the amount of Bill and thereafter issued another notice dated 13.08.98. Thereafter petitioner filed suit for recovery, which was contested by Respondents with application under section 8 of Arbitration Act, 1940. The Court directed the CMD to appoint an arbitrator vide order dated 07.07.2003.

It is submitted that on 26.03.2004 CMD was pleased to appoint an arbitrator. On 20.04.2004 the Petitioner filed Statement of Facts and in reply Respondents files Counter Statement of facts on 22.11.2004 and thereafter Rejoinder was filed. Matter continued before Shri Hazari Lal, Arbitrator, thereafter Shri S C Sharma was appointed as an Arbitrator and thereafter Shri Jaiveer Srivastva as an Arbitrator and in between also several arbitrators were substituted by respondents for the present arbitration.

On 22.11.2016, Respondents had issued a letter and sought consent for switching the arbitration proceedings to New Act 1996. On 05.12.2016 the Petitioner had submitted his consent and requested for early appointment of sole arbitrator as suggested by respondents. Thereafter the respondents had verbally agreed to settle the issue and to pay the balance amount of bill and security deposit with interest @ 12% p.a and have noted the same in their sheet.

However, on 05.10.2017 the Petitioner had requested the respondent for release of payments or the petitioner shall file an application for appointment of arbitrator under section 11 of Act 1996 but no reply came to this letter till filing of present application. Hence, this petition. The principle amount is admittedly paid.

Since the learned counsel for the respondent during the course of arguments submits the only issue now remain is as to if the interest is payable to the petitioner and if yes at what rate. Counsels submit the issue be referred to the arbitration. In the circumstances, Mr.Gajendra Giri, Advocate (Mobile : 9560624363) is appointed as an arbitrator. The fee shall be fixed as per the Act. Necessary declarations shall be made.

The petition is disposed of in above terms.

YOGESH KHANNA, J

FEBRUARY 08, 2018

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