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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Date of Decision: 14.2.2019

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ARB.P. 459/2018

AHLUWALIA CONTRACTS (INDIA) LTD.

..... Petitioner

Through: Mr. Shashank Garg with Mr. Tariq
Khan, Advs.

versus

RAHEJA DEVELOPERS LTD.

..... Respondent

Through: Mr. Dhruv Bansal, Adv.

CORAM:

HON'BLE MR. JUSTICE RAJIV SHAKDHER

RAJIV SHAKDHER, J. (ORAL)

1. Mr. Dhruv Bansal, who, appears for the respondent, says that there is no dispute with regard to existence of the Arbitration Agreement in the two contracts, wherein, disputes have erupted between the parties. These two contracts are dated 6.12.2010 and 11.2.2013. The first contract relates to Civil Works, while the second contract pertains to Plumbing Works.

2. Evidently, the respondent has appointed an Arbitrator in respect of both the contracts. Concededly, under the agreements, the parties had to first attempt to resolve the dispute amicably. It was only when such an attempt fails, that the parties could appoint an arbitrator in the matter. This aspect of the matter is indicated in Clause 28.1 of the Civil Works Contract. An identical clause is inserted in the Plumbing Works Contract as well. Therefore, for the sake of convenience, Clause 28.1 of the Civil Works Contract is extracted hereunder:

“28.1 All disputes and differences of any kind whatsoever arising out of or in connection with this Contract as also with regard to the implementation, meaning, interpretation or implications of the various clauses of the Contract and those of the Contract Documents or in respect of any other matter or thing arising out of or relating to the development and construction of the Project whether during the progress of the work or after their completion shall be communicated by the Contractor in writing to the Engineer-in-Charge and all possible efforts would be made by the Parties to sort out and resolve all such matters of controversies, disputes and differences, amicably with due dispatch and effective priority. In case the Contractor and the Engineer-in-Charge were unable to resolve such issues amicably latest within 10 working days from the date of receipt of such communication by the Engineer-in-Charge. In such eventuality, the Owner/Engineer-in-Charge shall take their decision thereon without any undue delay and preferably within next 10 working days and there upon they shall notify in writing such decision to the Contractor within next 5 working days.”

3. Interestingly, Clause 28.3 of the Civil Works Contract confers power of appointment of a Sole Arbitrator on the Management Review Committee constituted by the owner, that is, the respondent, whereas, Clause 28.3 of the plumbing works contract simply states that the disputes obtaining between the parties will be referred to the arbitration in accordance with the provisions of the Arbitration and Conciliation Act, 1996 (hereafter referred to as ‘1996 Act’).

4. Mr. Shashank Garg, who, appears for the petitioner, has a problem with the Arbitrator being appointed by the Management Review Committee constituted by the owner, that is, the respondent.

5. After having heard counsel for the parties for quite some time, counsel agreed that given the aforementioned clauses obtaining between the parties in the two contracts, this petition can be disposed of with the following directions which would secure the interest of both the parties.

6. I may also indicate that counsel for the respondent says that since the Arbitrator was appointed by the respondent without attempting a settlement in the matter, the parties could be referred to the Delhi High Court Mediation and Conciliation Centre (in short 'Centre').

7. Furthermore, counsel are agreed that they would have no difficulty if the present arbitrator is removed and a substitute arbitrator is appointed by this Court in the matter in respect of the aforementioned contracts, that is, the civil works contract and the plumbing works contract.

8. Accordingly, Mr. Prem Kumar, former ADJ (Cell No.9873176030) is appointed as an Arbitrator in the matter.

9. The learned Arbitrator will be paid his fees as per the provisions of Fourth Schedule appended to the 1996 Act.

9.1 Before entering upon reference, the learned Arbitrator will fill a declaration as required under Section 12 and other attendant provisions of the 1996 Act.

9.2 Learned Arbitrator will not enter upon till 15th April, 2019. In the interregnum, the parties will approach the Centre on 28.2.2019 at 3.00 P.M.

9.3 In case, settlement is reached, the same will be placed before the

learned Arbitrator for disposal of the reference in accordance with law.

9.4 Furthermore, in the event parties require further time, they will jointly approach the Arbitrator with a written request, who will then decide as to whether he should delay entering upon reference in the matter, keeping in mind the timeline defined under the provisions of the 1996 Act.

9.5 Needless to say, the order passed today will not impact the merits of the case.

10. The captioned petition is disposed of in the aforementioned terms.

RAJIV SHAKDHER
(JUDGE)

FEBRUARY 14, 2019/pmc