

\$~2

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

+ **ARB.P. 11/2020**

M/S INDERJIT MEHTA CONSTRUCTIONS PVT LTD

..... Petitioner

Through: Mr.Praveen Chauhan with Mr.Vineet
K. Wadhwa & Mr.Shivankar Rao,
Advs.

versus

UNION OF INDIA & ANR.

..... Respondents

Through: Mr.Anurag Ahluwalia , CGSC for
R-1 & 2.

CORAM:

HON'BLE MS. JUSTICE REKHA PALLI

ORDER

%

20.03.2020

I.A. 3658/2020 (for exemption)

1. Exemption allowed, subject to all just exceptions. The application stands disposed of.

I.A. 3657/2020 (for correction of typographical error)

2. This is an application filed by the petitioner seeking correction of an alleged typographical error in the order dated 03.03.2020 passed by this Court.

3. It has been averred in the application that the contract and the dispute in respect whereof the petitioner had prayed for appointment of an Arbitrator pertains to C.A NO Dg-MAP/PH-II/DEPMC/PKG-21/1R&C/01 of 2015-16 for completion of dwelling units including allied services for officers, JCO's/OR's at Hyderabad(AF), Dundigal,

Secunderabad, Begumpet (AF), Bidar, Hakimpet (AF), which is dated 05.05.2015, whereas the order disposing off the petition refers to a contract dated 05.03.2014., which contract pertains to work at Port Blair. He submits that the petitioner in fact was seeking appointment of an Arbitrator for adjudication of disputes in relation

4. After some arguments and upon perusal of the pleadings in the Court file, learned counsel for the petitioner concedes that it is only because the petitioner had not set out the correct details of the contract and legal notice in the petition as filed, that the order in question refers to agreement dated 05.03.2014. He therefore, makes an oral prayer that the petitioner be permitted to file an amended petition not only reflecting the correct date of the contract and the legal notice but also the relevant clause of the General Conditions of Contract which is Clause 60 and not Clause 70.

5. Issue notice. Learned counsel for the respondents accepts notice and does not dispute the aforesaid position. He submits that since he was served with the copy incorporating the address of the respondent no.3 at Hyderabad and the contract dated 05.05.2015 he was under the bonafide impression that the learned Arbitrator was being appointed with reference to the contract pertaining to the work at Hyderabad. He therefore does not oppose the application.

6. Having considered the submissions of the learned counsel for the parties and perused the record, I find that even though it is the petitioner who is to be blamed for the error in the order dated 03.03.2020, since both parties are ad idem that the Arbitrator was required to be and agreed upon to be appointed for adjudication of

disputes in relation to contract dated 05.05.2015, the application is allowed. Accordingly the date of the contract as also of the legal notice and the relevant Clause of the GCC in the order dated 03.03.2020 will read as 05.05.2015, 27.07.2019 and Clause 70 respectively. The order dated 03.03.2020 will now be read as hereinbelow.

“1. The present petition under Section 11 (6) of the Arbitration and Conciliation Act, 1996 seeks appointment of an Arbitrator to adjudicate the disputes and differences which have arisen between the parties in relation to the agreement dated **05.05.2015**.

2. Learned counsel for the petitioner submits that upon disputes and differences having arisen between the parties, the petitioner invoked the arbitration clause by way of the legal notice dated **27.07.2019** but has received no reply thereto from the respondent. He, therefore, prays that an Arbitrator be appointed by this Court in terms of the arbitral clause contained in para 60 of the General Conditions of Contract which reads as under:-

"60. All disputes, between the parties to the contract (other than those for which the decision of the DG MAP 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 serving officer having degree in Engineering "or equivalent cr -'having passed Final/Direct Final Examination of Sub Division II of institution of Surveyors (India) recognised by the Govt of India to be appointed by the Engineer-in-Chief, Army Headquarters, New Delhi or in his absence, the officer officiating as Engineer-in-Chief or Director General of Works if specifically delegated in writing by Engineer-in-Chief, Army Headquarters, New Delhi whose decision

shall be final, conclusive and binding. The Arbitration shall be governed by Arbitration and Conciliation Act, 1996.

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.49 and 50 hereof.

Provided that in the event of abandonment of the works or cancellation of the Contract under Condition Nos. 46, 47 or 48 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 otherwise shall not in any manner militate against the Government's right of recovery from the contractor as provided in condition 57 hereof. If the Arbitrator so' appointed resigns his appointment 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 case and pleading in defense.

The Arbitrator may proceed with the arbitration, exparte, if either party, inspite of a notice from the Arbitrator, fails to take part. in the proceedings.

The Arbitrator shall give his reasoned award in writing on all matters referred to him and shall indicate his findings, alongwith 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 discretion. The award of the Arbitrator shall be final and binding on both the parties to the Contract.”

3. On 14.01.2020, notice in the present petition was accepted by Mr. Anurag Ahluwalia, Advocate who was granted time to get instructions. Today, on instructions, he submits that in view of the decision of the Hon'ble Supreme Court in *Perkins Eastman Architects DPC vs. HSCC (India) Ltd.*, 2019 SCC Online 1517, even though the terms of the arbitration clause provides for the appointment of a serving officer of the respondent as an Arbitrator, he does not object to the appointment of an independent Arbitrator by this Court.

4. Accordingly, in the light of the aforesaid arbitral clause and the stand taken by learned counsel for the parties, the petition is allowed. Justice Pradeep Nandrajog, (Retd.) (Mob:-98180-00130) is appointed as the Sole Arbitrator to adjudicate the disputes and differences which have arisen between the parties out of the agreement dated **05.05.2015**.

5. It is made clear that this Court has not made any observations on the merits of the matter and it will be open for the parties to raise all pleas permissible in law, before the learned Arbitrator.

6. The arbitration shall be conducted under the aegis of Delhi International Arbitration Centre (DIAC). The fees of the learned arbitrator shall be in accordance with the Schedule-IV of fees prescribed under the Delhi High Court Arbitration Centre (Administrative Costs and Arbitrators' Fees) Rules.

7. Before commencing arbitration proceedings, the Arbitrator will ensure compliance of Section 12 of the Arbitration and Conciliation Act, 1996.

8. A copy of this order be sent to Delhi International Arbitration Centre (DIAC) as also to the learned Arbitrator.

9. The petition is disposed of in the aforesaid terms.”

7. The application is disposed of.

8. A Copy of this order be sent to the learned Arbitrator.

Dasti under the signatures of the Court Master.

REKHA PALLI, J

MARCH 20, 2020

gm