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

+ **ARB.P. 271/2020**

PINNACLE PILING (INDIA) PRIVATE LIMITED

..... Petitioner

Through: Mr.Sahil Tagotra, Mr.Anjuman
Tripathy and Mr.Vishwaraj Singh, Advs.

versus

M/S JUVENTUS ESTATES LTD.

..... Respondent

Through: Mr. Sunil Dalal, Mr. Devashish
Bhaduria and Mr.Jaspreet Singh Chawla,
Advs.

CORAM:

HON'BLE MR. JUSTICE C.HARI SHANKAR

ORDER (O R A L)

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20.11.2020

(Video-Conferencing)

1. This is a petition under Section 11(6) of the Arbitration and Conciliation Act, 1996, for the appointment of a Sole Arbitrator, to arbitrate on the disputes between the parties.

2. The controversy germinates from a work order, dated 29th March, 2019, whereby the respondent contracted the work of piling activities to be conducted at the site of the “One Indiabulls” project at Sector 104, Gurgaon to the petitioner. The work order provided for arbitration, as a mode of resolution of disputes, if and when they were to arise between the parties. The venue of arbitration was fixed at Delhi and Courts in Delhi were conferred with the exclusive jurisdiction to deal with all matters arising out of the work order.

3. Inasmuch as learned Counsel have, in a spirit of accommodation, agreed not to join issue on the arbitrability of the dispute in question, it is not necessary to set out the arbitration clause. Suffice it to reproduce the following communication, dated 13th January, 2020, from the petitioner to the respondent, setting out the petitioner's claim:

“Ref: PPIL-UPC/Kandivali/2019-20/114
Date: 13th January, 2020

To,
M/s. Juventus Estate Ltd,
Indiabulls House 448-451,
Udyog Vihar, Phase -5,
Gurugram 122001,

Att: Mr. Shalabh Raizada

Project: Piling works of Residential Project One Indiabulls,
sector 104, Gurugram,

Work Order: 3271100198 dt. 29.03.2019

Subject: Pre closure of contract & release of pending amount's.

Our Reference: UPC-PPIL/Kandivali/2019-20/022
 dt.11.05.2019
 PPIL-UPC/JEL/2019-20/018
 dt. 08.06.2019
 PPIL-UPC/JEL/2019-20/029
 dt. 20.07.2019
 Email dated- 14/10/2019
 PPIL-UPC/Kandivali/2019-20/084
 dt. 15.11.2019
 PPIL-UPC/Kandivali/2019-20/110

dt. 27.12.2019

Dear Sir,

With reference to above mentioned project and referred letters and email please note that as of today we have not received any communication from your end neither any payment has been done.

Please note the outstanding amount arc as listed bellow .

1. Certified work done.	Rs. 73,25,698/
2. Amount withheld against PBG.	Rs.13,73,550/
3. Retention amount.	Rs. 7,94,773/
4. Compensation towards delay and pre closure of contract	Rs. 1,55,29,722/-
Total amount to be paid	Rs. 2,50,23,747/-

(Rupees Two Crore Fifty Lakh Twenty Three Thousand Seven Hundred Forty Seven Only)

We tried to communicate with you on several occasions but there has been absolutely no response from your end and this has created doubts in our mind regarding your intentions to pay the due amounts.

Please note that we expect our all amounts along with interest @ 21 % to be paid within 7 days from date of this letter or else we shall be forced to take legal action and next correspondence shall be from our advocates.

Please note that you have violated the contract conditions on several occasions but still we continued to work and waited patiently and tried to solve the issue in a professional way but there was absolutely no reciprocating action from your end.

Thanking you,

For **PINNACLE PILING INDIA PVT. LTD.**

Sd/-

Subodh Borwankar

(Operations Director)

CC: Mr. Ajay Jolly (AVP Finance)

Encl 1) Above referred letter with supporting documents
2) Ledger Copy”

4. Needless to say, the respondent emphatically denies the justifiability of the aforesaid claim and submits that it has no dues to pay to the petitioner.

5. In any event, an arbitrable dispute has, clearly, arisen between the parties.

6. Though, in the counter affidavit filed in response to the petition, a contention has been sought to be advanced, by the respondent, regarding the petitioner not having complied with the protocol to be followed under the General Conditions of Contract governing the relationship between the petitioner and the respondent prior to the invocation of arbitration, Mr. Tagotra, learned counsel for the petitioner commenced his arguments, today, by submitting, on instructions, that his client was willing to the appointment of Hon’ble Mr. Justice M.L. Mehta, a learned Retired Judge of this Court and one of the arbitrators on the panel of arbitrators maintained by the respondent, as the Sole Arbitrator to arbitrate on the aforesaid disputes and Mr. Sunil Dalal, in a spirit of accommodation, acceded to the said proposal.

7. As such, it has become unnecessary to enter into the question of whether the petitioner has approached this Court after following the protocol stipulated in the GCC before invoking arbitration.

8. In view thereof, the present petition is disposed of by appointing Hon'ble Mr. Justice M.L. Mehta (retired), as the Sole Arbitrator to arbitrate on the disputes between the parties. The learned Sole Arbitrator would arbitrate on the matter in accordance with the provisions of the Arbitration and Conciliation Act, 1996, keeping in view the covenants of the documents setting out the relationship between the parties. The fees of the learned Sole Arbitrator would be in accordance with the Fourth Schedule of the 1996 Act.

9. The parties are directed to contact the learned Sole Arbitrator within three days from today, with a copy of the present order, which would be emailed to the learned Counsel as soon as it is finalised. The learned Sole Arbitrator may, thereafter, proceed to enter on the reference. Disclosure under Section 12(2) of the 1996 Act would be made by the Sole Arbitrator within one week of entering on the reference.

10. This petition stands disposed of with the aforesaid directions.

C.HARI SHANKAR, J

NOVEMBER 20, 2020/kr