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

Decided on 17th September, 2020

+ **ARB.P. 384/2020 & IA. 8195/2020**

VIN SOFTTECH PVT. LTD. Petitioner

Through: **Mr. Praveen Chauhan, Adv.**

versus

SARCON PROJECTS PVT. LTD.Respondent

Through: **Mr. Preet Pal Singh, Ms. Richa Sandilya and Mr. Kunal Tandon, Adv.**

CORAM:

HON'BLE MR. JUSTICE C .HARI SHANKAR

ORDER (ORAL)

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17.09.2020

(Video-Conferencing)

C .HARI SHANKAR, J.

IA. 8195/2020

1. Allowed, subject to all just exceptions.

2. The application is disposed of.

ARB.P. 384/2020

1. Issue notice to the respondent. Notice is accepted by Mr. Preet Pal Singh, learned counsel for the respondent.

2. With the consent of the parties, this petition is taken up for final disposal.

3. This petition, under Section 11(4) of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as “1996 Act”), seeks appointment of a presiding arbitrator, as the arbitrators, appointed by the parties, have been unable to arrive at a consensus in that regard.

4. The dispute emanates from a construction agreement, dated 6th June, 2019, whereby the respondent was contracted to construct on the plot of the petitioner at C-20/1A/2, Sector 62, Noida, Uttar Pradesh. According to the petition, the petitioner alleges that there was delay in the progress of work on the part of the respondent, and that a Show Cause Notice was issued to the respondent, on 21st January, 2020, by the petitioner, whereafter the time for the completion of the project was extended, *vide* an amendment to the original agreement, dated 6th March, 2020.

5. It is asserted in the petition that the agreement between the parties was terminated, *vide* termination notice, dated 3rd July, 2020.

6. Needless to say, there are allegations and counter allegations between the parties, and this Court, in these proceedings, is not required to enter into the merits thereof. Suffice it to state that the petitioner claims, from the respondent, ₹ 1,14,38,016/-, whereas the respondent claims approximately ₹ 2.32 crores.

7. Clause 25 of the Construction Agreement, dated 6th June, 2019, provides for arbitration, as the mode for resolution of disputes between the parties, and reads thus:

“25. Any dispute or difference relating to the specifications, designs, drawings, quality of workmanship or material used in the work, relating to carrying out the works, whether during the progress of the work or after completion of work or on any other matter whatsoever relating to the contract, unless resolved amicably within 30 days of raising such dispute in writing, shall be referred to a panel of three arbitrators, one to be appointed by each party and the third to be decided jointly by the other two. In an event of non-agreement on the third arbitrators and if any party does not cooperate or remains absent at the reference, the arbitrators, the same shall be appointed under the provisions of Indian Arbitration Act.”

8. Acting on the basis of the afore-extracted Clause of the Construction Agreement, the petitioner appointed Mr. R.D. Mirza, a retired Civil Engineer; whereas the respondent appointed Mr. Anil Sharma, Advocate, as their respective arbitrators.

9. The arbitrators have been unable to arrive at a consensus regarding the presiding arbitrator, as a result of which this petition has come to be filed.

10. Mr. Preet Pal Singh, learned counsel for the respondent, agrees that, in the circumstances, the presiding arbitrator would have to be appointed by this Court, and submits that, in fact, a similar petition has also been filed by him, which is likely to be listed shortly.

11. Be that as it may, in view of the impasse that has ensued, as a result of the inability of the learned arbitrators appointed by the parties to arrive at a consensus regarding the presiding arbitrator, this Court is required to take a decision in that regard, in view of Section 11(4) of the 1996 Act, read with Clause 25 of the Construction Agreement.

12. Given the nature of the disputes, this Court appoints Mr. Brij Bhushan Gupta, learned Senior Advocate of this Court, (Mobile No. - 9811348989, Office Address - 380, Lawyer's Chamber, Block-II, The High Court of Delhi), as the presiding arbitrator. Learned counsel for the parties are directed to contact the presiding arbitrator, at the aforesaid particulars within forty-eight hours.

13. The presiding arbitrator would furnish the requisite disclosure, in accordance with Section 12 of the 1996 Act, within a week of entering on reference.

14. Fees of the learned presiding arbitrator would be fixed in accordance with the provisions of the 1996 Act read with the Fourth Schedule thereof.

15. Needless to say, the factual recital, hereinabove, regarding the disputes between the parties, is merely to delineate the scope of the disputes and would not influence the learned arbitrator, in arbitrating on the disputes between the parties.

16. With the aforesaid directions, this petition is disposed of.

C. HARI SHANKAR, J.

SEPTEMBER 17, 2020/r.bararia

