

\$~2(original side)

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

+ **ARB.P. 393/2020 & I.A. 8325/2020**

GENCON ENGINEERING AND CONSTRUCTION PVT Ltd.

..... Petitioner

Through: Mr. Vikram Singh Baid, Adv.

versus

CINDA ENGINEERING AND CONSTRUCTION PVT LTD

..... Respondent

Through: Mr. Neil Hildreth and Mr.
Rahul Jain, Adv.

CORAM:

HON'BLE MR. JUSTICE C. HARI SHANKAR

ORDER (ORAL)

%

21.09.2020

(Video-Conferencing)

I.A. 8325/2020 in ARB.P. 393/2020

1. Allowed, subject to all just exceptions.
2. The application stands disposed of.

ARB.P. 393/2020

1. This is a petition under Section 11 (6) of the the Arbitration and Conciliation Act, 1996 (hereinafter referred to as “the 1996 Act”), seeking intervention of this Court to appoint a sole arbitrator to arbitrate on the disputes between the parties.

2. Issue notice.
3. Notice is accepted by Mr. Neil Hildreth, learned counsel, on behalf of the respondent.
4. Both learned counsel have been heard and, with consent of learned counsel, the matter is being disposed of at this stage itself.
5. The disputes arise out of a contract dated 9th January, 2017, awarded by the respondent to the petitioner, for a total contractual value of ₹ 4,81,28,715/-.
6. The contract was for “U/G CS piping fabrication and installation of civil & structure works”.
7. The petitioner alleges default, on the part of the respondent, in providing pipes, for the petitioner to complete the work stipulated under the contract.
8. Various other allegations have also been levelled, by the petitioner against the respondent, including frequent changing of scope of work and other delays. As a result, it is alleged in the petition that the cost of the work increased from ₹ 4,81,28,715/- to ₹ 5,84,61,522.77.
9. It is also alleged, by the petitioner, that bills of the petitioner were not cleared by the respondent till time.

10. Needless to say, the respondent disputes these allegations and, *vide* letter dated 20th July, 2020, levelled counter allegations, of default on the part of the petitioner, as also of amounts being payable by the petitioner to the respondent as a consequence thereof.

11. It appears that the claims of the parties, against each other, are in the region of approximately ₹ 1.7 crores, each way.

12. Arbitrable disputes have, therefore, clearly arisen between the parties.

13. Clause 15.1, in the agreement between the parties, provides for arbitration as a means to resolve differences and disputes between them, and reads as under:

“15.1 If any dispute or difference of any kind whatsoever shall arise between the company and the contractor in connection with, or arising out of the contract, or the execution of the contract works, whether during the progress of the contract works or after their completion and before or after the termination, abandonment or breach of the subcontract, it shall be referred to arbitration as hereinafter provided.

All disputes or differences shall be referred to a tribunal comprising three (3) arbitrators under the (Indian) Arbitration and Conciliation Act, 1966, Each party to the arbitration shall appoint one (1) arbitrator and the two (2) arbitrators thus appointed shall choose the third arbitrator who will act as presiding arbitrator of the tribunal (together forming the "Arbitral Tribunal"). The decision(s) of the Arbitral Tribunal shall be final and binding on the Parties. The venue of arbitration shall be New Delhi. The governing law of the arbitration shall be the substantive law of India.”

14. Learned counsel are *ad idem* that, though the afore-extracted arbitration clause contemplates an Arbitral Tribunal of three arbitrators, they are agreeable to the disputes being decided by a sole arbitrator.

15. For this purpose, communications were exchanged between the petitioner and the respondent, suggesting names of person to be appointed as sole arbitrator. However, there is no consensus between them, resulting in the filing of the present petition seeking intervention of this Court in the matter.

16. As there is no consensus between the parties regarding the identity of the sole arbitrator to arbitrate on the disputes between them, Section 11 (6) of the 1996 Act requires this Court to appoint a sole arbitrator.

17. Accordingly, this Court appoints Hon'ble Mr Justice A. K. Pathak (retd), a retired Judge of this Court, (Address: AB-84 , Shahjahan Road, New Delhi-110003, Mobile No. 9910384602), as the sole arbitrator to arbitrate on the disputes between the parties.

18. The parties would contact the learned sole arbitrator at the details provided hereinabove, within a period of one week from today.

19. The fees payable to the learned sole arbitrator would be in accordance with Schedule IV of the 1996 Act.

20. Within a week of entering on the reference, the learned sole arbitrator would furnish the requisite disclosure, under Section 12 of the 1996 Act.

21. This petition stands disposed of in the aforesaid terms.

SEPTEMBER 21, 2020

dsn

C. HARI SHANKAR, J.

