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

Date of Decision:- 01.09.2020

+ ARB.P. 795/2019

M/S CHAITANYA CONSTRUCTION COMPANY..... Petitioner
Through: Mr. Anil Singh, Adv.

versus

DELHI JAL BOARD Respondent
Through: Ms. Sangeeta Bharti, ASC.

CORAM:
HON'BLE MS. JUSTICE REKHA PALLI

REKHA PALLI, J (ORAL)

1. The present petition under Section 11 (6) of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as 'the Act') seeks appointment of an Arbitrator for adjudication of disputes which have arisen between the parties in relation to the work order Nos.72,111,119,126,125 issued by the respondent between July and August 2018.

2. It is the petitioner's case that the respondent issued notices inviting tenders for supply of various items and materials during July/August 2018, in response where to the petitioner submitted its bids which were accepted. The respondent sent the petitioner copies of the contracts which contained the terms and conditions based on which the work orders were to be issued, and directed the petitioner to sign these

contracts and have them submitted to the respondent's office for issuance of work orders. Once the petitioner duly executed the agreements on stamp papers and submitted the same, as per the respondent's instructions, the work orders were issued in its favour at the respondent's office. The petitioner has averred that despite issuing work orders in its favour, the respondent neither handed over the site of work to the petitioner, nor permitted it to work there, which caused grave losses to the petitioner since it had already purchased the materials required to execute the work. On 27.09.2018, the petitioner preferred a RTI application to obtain a copy of the contract signed by him from the office of the respondent, which was duly provided to him on 14.01.2019. However, since the respondent failed to address its grievances regarding the obstacles to the execution of work, the petitioner invoked arbitration by way of a legal notice dated 29.04.2019. When the respondent failed to respond to even the invocation, the present petition was filed.

3. Upon notice being issued, the respondent filed its counter affidavit. The respondent's primary ground for opposing the petition was that despite issuing work orders in favour of the petitioner, the respondent had never signed a formal contract containing an arbitration clause. It was averred that although the petitioner submitted a copy of the contract duly signed by it, no signature was ever attested on the contract by the respondent and therefore, the contract and the arbitration clause contained therein are inchoate documents. It has been further averred that mere issuance of a work order in favour of the petitioner, which admittedly does not contain any arbitration clause,

cannot be sufficient on its own to vest a right in the petitioner to approach this Court under the Act.

4. Today, Ms. Sangeeta Bharti, learned counsel for the respondent has reiterated the respondent's plea taken in its reply and has sought to rely on the decision of the Hon'ble Supreme Court in ***Uttarakhand Purv Sainik Kalyan Nigam Ltd. v. Northern Coal Field Ltd., (2020) 2 SCC 455*** to contend that once it is undisputed that the agreement bearing the arbitration clause was never signed by the respondent, there is no question of any right of arbitration arising in favour of the petitioner. She submits that the work orders were issued by the respondent, but shortly thereafter, the respondent was subject to a vigilance inquiry which resulted in its decision to refrain from executing the contract with the petitioner. By drawing my attention to paragraph 7.11 of the decision in ***Uttarakhand Purv Sainik (supra)***, she places emphasis on the difference between a draft agreement and a final agreement which is signed by the parties and contends that even if there was an arbitration clause in the unsigned agreement exchanged between them, the same was not binding upon the parties. She also draws my attention to the legal notice issued by the petitioner to the respondent on 29.04.2019 and contends that even now, the petitioner has not raised any specific disputes or demands, but has instead raised vague and unsubstantiated grievances. She, thus, prays for the present petition to be dismissed.

5. I have considered the learned counsel for parties at length and perused the record with their assistance.

6. The admitted position which emerges from the record is that the contract, which contains the arbitration clause, undoubtedly bears the

signatures of the petitioner only. It is, however, a matter of record that the petitioner was able to obtain a copy of this very contract from the office of the respondent, in response to his RTI Application, which implies that these contracts are retained and in the possession of the respondent. It is the petitioner's case that once its bid was accepted, the respondent specifically directed it to sign the contract, which was a precondition to formulate the terms of the work order. On the other hand, the respondent has defended itself on the ground that the jurisdiction of this Court has been invoked on the basis of a contract which neither bears its signatures nor the requisite particulars, which makes it an inchoate document and an ineffective arbitration clause.

7. During arguments, Ms. Bharti was not in a position to deny that as a matter of practice, the respondent issues work orders only once the bidder agrees to accept the terms and conditions of the draft agreement. This position, of course, is in line with the practice directions issued by this Court in public interest in Paragraph 8 of the decision in ***K.G.Bhandari vs. Delhi Jal Board & Ors.*** (2003) 102 DLT 938 which reads as under:

“8. The matter has been further examined in the light of observations of C.V.C. (CTE's Organisation) contained in their letter dated 6.11.1991 and suggestions made by them in the above mentioned letter. Following amendments are issued to all concerned for strict compliance for finalising the Contract Agreement in the Delhi Water Supply and Sewage Disposal Undertaking:

(1) Letter of Intent should be issued only after obtaining the approval of the Competent Authority.

(2) In the Letter or Intent, the Contractor should be directed to enter into formal agreement within the time specified. The date of start of the work and the value should also be mentioned.

(3) The Work Order should be issued only after the Contractor Agreement has been executed between the parties but where there is delay in the execution of Contract Agreement and the work is of very emergent nature, the work order can be issued before execution of the Contract Agreement but all care should be taken that in such cases the date to be mentioned in the Contract Agreement and the work order tally and there is no discrepancy.

(4) There should be minimum possible gap between the issue of the Letter of Intent and signing of the agreement. The Letter of Intent should be issued within the period of validity to the Contractor conveying acceptance to the Contractor in the light of para 2 above.

...

...

(7) Section 202 further provides that every such contract shall be made on behalf of the Corporation by the Commissioner. The contract shall only be made by him after obtaining approval or sanction of the Competent Authority as provided in the Act.

(8) Section 203 lays down the mode of execution of the contracts by the Corporation and for that purpose Corporation has prescribed the Bye-laws. Execution of Contract By-laws, 1958 provides that every contract entered into by the Commissioner, the common seal of the Corporation has to be affixed and the contracts to be signed by the Commissioner or an officer duly authorised by him. The common seal of the Corporation has to be affixed in the presence of a member of the Standing Committee who shall sign the Contract in token thereof that the same was sealed in his presence. Two witnesses have to sign the documents to prove the execution of the contract. Their names and addresses should be legible.” (emphasis supplied)

8. Thus, it emerges that the respondent, after accepting the bid, directed the petitioner to accept the terms and conditions of the standard contract, which included an arbitration clause. It is only when the petitioner had handed over a duly signed copy of the contract to the

respondent that it proceeded to issue the work order under the signatures of its authorised officer. Thus the respondent's decision to issue the work orders after presenting the draft contract agreement to the petitioner for signatures, reveals that the respondent itself proposed the terms and conditions therein, including the arbitration clause, to the petitioner. There can be no doubt about the fact that the work order issued under the signatures of the respondent's authorised officers could not have simply been issued without the parties being *ad idem* about the terms and conditions of the contract, which included the arbitration clause.

9. Even though undoubtedly a valid arbitration agreement is the very foundation to begin the process of arbitration, but Section 7(4) of the Act itself provides that the arbitration agreement need not be in any concrete or particular form. The statute further goes on to provide alternate ways to ascertain the presence of an arbitration agreement, such as through an exchange of letters, telex, telegrams or other means of telecommunication which provide a record of the agreement. Thus, an arbitration agreement can be evidenced from the correspondences exchanged between the parties; in this regard further reference can be made to the decision of the Hon'ble Supreme Court in ***Govind Rubber Limited vs. Louis Dreyfus Commodities Asia Private Limited*** (2015) 13 SCC 477, which the petitioner has relied upon. Against the backdrop of this legal position, the respondent's sole ground to deny the existence of the arbitration agreement viz. that it never signed the contract containing the arbitration clause, has to be rejected. Once it is a matter of record that the petitioner signed the agreement containing the arbitration clause, *as provided by the respondent*, and that the

respondent had issued the work orders based on this contract, it cannot be said that the parties were not ad idem on the applicability of the arbitration clause. Therefore, in my view, a conjoint reading of the documents exchanged between the parties and the turn of events reveals that they intended to resolve all disputes relating to the work order through arbitration. Merely because the work order does not contain any specific arbitration clause will not be sufficient to hold that there was no arbitration clause. In my view, the respondent's attempt to elude arbitration on this pretext appears to be a way for it to pivot from its original position and gain undue advantage of its own deliberate omission to place its signatures on the contract.

10. It is a matter of fact that the petitioner submitted the duly signed contract after accepting all the terms and conditions suggested by the respondent, including the arbitration clause. It is only after receiving the signed contract from the petitioner that the respondent issued the work order. In this respect, the respondent's contention that the purported vigilance enquiry was the reason why it refrained from pursuing its relationship with the petitioner under the work order, also cannot hold ground. Ultimately, the work order was responsible for allocating work to the petitioner and the same was issued only pursuant to the contractual agreement between the parties. If this contention of the respondent were to be accepted, even then it was incumbent on it to proceed through formal channels and withdraw its work orders granted to the petitioner, rather than simply taking resort under the plea that it never signed the contract in the first place.

11. I also do not find any merit in the contentions of Ms Bharti that since no specific dispute has been raised by the petitioner, it was

estopped from invoking arbitration. A perusal of the petitioner's legal notice dated 29.04.2019 shows that it has specifically sought release of the amounts stipulated in the work orders, which claim is being disputed by the respondent. In these circumstances, and for the reasons stated thus far, I am of the view that there are disputes between the parties which are required to be adjudicated through arbitration in terms of Clause 25 of the contract which reads as under:

"Clause 25

Except where otherwise provided in the contract all question and disputes relating to the meaning of the specifications, designs, drawings and instructions herein before mentioned and as to the quality of workmanship, or materials used on the work or as to any other question, claim, right matter of thing what so ever, in anyway rising out of, or relating to the contract design, drawings, specifications, estimates, instructions, orders, or these conditions of otherwise, concerning the works, or after the completion or abandonment thereof, shall be referred to the sole arbitration of the Chief Executive Officer, DJB or any person nominated by the Chief Executive Officer on his behalf. The awarded of the arbitration shall be final, conclusive & binding on all parties to this contract",

12. Before I conclude, it is pertinent to note that the respondent's reliance on the decision in ***Uttarakhand Purva Sainik*** (*supra*) is wholly misplaced. In the facts of that case, the Apex Court was not dealing with a situation like the present one where the draft agreement had been signed by one of the parties and a work order had been subsequently issued by the non-signing party on the basis of this agreement. Rather, that case pertained to a situation where the parties

were trying to enter into an agreement but ultimately did not follow through.

13. In the light of the aforesaid, and the undisputed position that the respondent has failed to appoint an arbitrator, the petition is allowed.

14. Accordingly, in view of the aforementioned provision which mandates that all disputes between the parties are required to be adjudicated by arbitration, the petition is allowed. Ms.Rashmi Gogoi Mehta, Advocate (Mobile No.98189-86700) is appointed as the sole Arbitrator to adjudicate the disputes which have arisen between them in relation to in relation to work order No.72,111,119,126,125.

15. Before commencing arbitration proceedings, the Arbitrator will ensure compliance with Section 12 of the Act and the fee of the learned arbitrator shall be determined as per Schedule IV of the Act.

16. It is made clear that this Court has not examined the rival claims of the parties on merits and it will, therefore, be open for them to file claims/counter claims and raise all pleas permissible in law before the learned Arbitrator, which will then be decided in accordance with law.

17. A copy of this order be sent to the learned Arbitrator through electronic means.

18. The petition stands disposed of.

REKHA PALLI, J

SEPTEMBER 01, 2020

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