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

+ **ARB.P. 322/2020 & I.A. 10108/2020**

S AND S TECHNOCRATS PRIVATE LIMITED Petitioner

Through: Mr. Dhruv Rohatgi, Adv.

versus

CLASSIC INFRA SOLUTIONS PRIVATE LIMITED

..... Respondent

Through: Mr. Anil Kr. Singh, Adv.

CORAM:

HON'BLE MR. JUSTICE C. HARI SHANKAR

ORDER (ORAL)

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18.01.2021

1. This is a petition under Section 11(6) of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as “the 1996 Act”) for reference of the disputes, between the petitioner and the respondent, to arbitration.

2. The bare facts, insofar as they are relevant for the purposes of the present order, may be set out thus:

(i) On 4th May, 2015, an agreement was executed between the petitioner and the respondent, for executing the finishing works for the “Paras Irene-Tower-N-6 & Tower-N-7” project of the respondent at Sector-70A, Gurgaon, Haryana. On the same day, i.e. 4th May, 2015, a separate work order agreement, bearing No. CIPL/IRENE/FINISHING/WO/85 was also

executed between the petitioner and the respondent.

(ii) For ease of reference, the former agreement would be referred to as the “parent agreement”.

(iii) Mr. Dhruv Rohatgi, learned counsel appearing for the petitioner, drew my attention to Clause 8 in the parent agreement, which reads thus:

“8. The following documents shall form, and be read and construed as, an integral part of this Agreement, viz.

- i. Detailed Work Order Agreement Vide Ref. No. CIPL/IRENE/FINISHING/WO/85, dated 04.05.2015, issued by CLIENT.
- ii. Letter of intent Vide Ref. No. NIL issued by CLIENT
- iii. Accepted mobilization schedule.

Words and expression used, but not defined herein shall have the meanings given to them in the documents.”

As has been correctly pointed out by Mr. Rohatgi, Clause 8 of the parent agreement clearly states that the work agreement, to be executed thereunder, would be treated as an integral part of the parent agreement.

(iv) The petition alleges that there was delay, on the part of the respondent, in making payment against the Running Account Bills raised by the petitioner, resulting in obstruction in carrying the work under the parent agreement.

(v) Nevertheless, it is stated that, after the work was completed, the petitioner submitted its final bill on 16th February, 2018, for a sum of ₹ 28,46,505/-, which, it is alleged, has not been paid. Additionally, it is asserted that the respondent is bound to refund, to the petitioner, retention money of ₹ 13,01,820/-, in respect of the work executed by the petitioner.

(vi) It is further averred that, against a second work order agreement dated 16th May, 2015, the respondent is liable to refund an amount of ₹ 6,17,082/- . As such, the total claim of the petitioner works out to ₹ 47,65,406/-.

(vii) Clauses 9 (d) & (e) of the parent agreement, which provide for resolution of the disputes relating thereto, read thus:

“(d) All disputes and differences of any kind whatsoever arising out of or in connection with this Contract as also with regards to the implementation, meaning, interpretations of the various clause of the Contract and those of the Contract Documents or in respect of any other matter or thing arising out of or relating to the development and construction of the proposed project whether during the progress of the work or after its completion shall be communicated by the Contractor in writing to the Project Manager and all possible efforts would be made by the parties to sort out and resolve all such matters of controversy, disputes and differences, amicably with due dispatch and effective priority. In case, the Contractor and the Project Manager are unable to resolve such issue amicably latest within 21 working days from the date of receipt of such communication by the Project Manager, then the same shall be settled by way of Arbitration as per Arbitration and Reconciliation Act, 1996 (Revised) as discussed in Clause No. 30 of

General Conditions of Contract.

(e) Subject to the provisions of this Contract and for such matters which the Court may have jurisdiction under *and in respect of any arbitration proceedings*, and subject further to applicable laws in this regard, this Contract shall be subject to the exclusive jurisdiction of the Courts in Delhi.”

(Emphasis supplied)

3. Before proceeding further, it would be appropriate to advert to a preliminary objection, raised by Mr. Anil Kr. Singh, learned counsel for the respondent.

4. Mr. Singh contends that the present petition is not maintainable before this Court, as “courts at Gurgaon” would have exclusive jurisdiction to adjudicate on the matter. He placed reliance, for the said purpose, on Clause 18 of the work order agreement dated 4th May, 2015, which reads thus:

“18. Termination of Order:

If Client feels at any point of time that contractor is not capable to complete the work at the required pace and/or maintaining the quality standard set up by the clients, then Client may terminate the contract by giving 7 days written notice to this effect.

Recoveries upon Termination: In the event of the contractor’s failure to perform the Work as set out herein, Client shall have the right to terminate this Work Order and shall have the right to recover the dues from contractor, these recoveries shall also include by contractor’s security deposit/retention money, unpaid bills, equipment/machinery lying at site

Settlement of Disputes: Any dispute arising out of this work order shall be settled as per terms & conditions of this work order. In case of failure to settle amicably,

the dispute shall be finally resolved in accordance with the Arbitration & Conciliation Act, 1996 by sole Arbitrator to be nominated (including nomination of replacement Arbitrator, if necessitated by vacancy of the post caused by any reason whatsoever) by the Client. The venue for arbitration shall be Gurgaon. This sub contract is governed as per the Laws of India and the jurisdiction of only Gurgaon Courts shall apply.”

5. Mr. Rohatgi has, in response to this objection of Mr. Anil Kr. Singh, pointed out that by virtue of Clause 8 of the parent agreement, the work order agreement is an integral part of the parent agreement. Besides, he submits that Clause 18 of the work order agreement, merely stipulates the “venue of arbitration” as Gurgaon. The allusion to jurisdiction of Gurgaon courts, in the submission of Mr. Rohatgi, cannot divest this Court of jurisdiction to entertain the present petition under Section 11 of the 1996 Act.

6. In my opinion, it cannot be said that Mr Singh has been able to make out a case for non-suiting the petitioner on the ground of territorial jurisdiction. Clause 9(e) of the parent agreement clearly states that, *in respect of arbitration proceedings*, courts in Delhi would have jurisdiction.

7. A harmonious reading of Clause 9(d) of the parent agreement and Clause 18 of the work order agreement would seem to indicate that the jurisdiction of Gurgaon courts is in respect of the subject matter of the dispute, and not with respect to arbitration. *In any event, so far as arbitration is concerned, Clause 9(e) of the parent agreement clearly states that Delhi courts would have jurisdiction.* The work

order agreement is, by virtue of Clause 8 of the parent agreement, an integral part thereof. Seen thus, Clause 9(e) of the parent agreement and Clause 18 of the work order agreement are part of the same contract. They cannot, therefore, be read as discordant with each other. Clause 9(e) of the parent agreement being a specific dispensation governing the jurisdiction of the court “in respect of arbitration”, Clause 8 of the work order agreement cannot come to the aid of the respondent.

8. In any event, in view of Clauses 8 and 9(e) of the parent agreement, no case for throwing out the present petition on the ground of territorial jurisdiction, can be said to exist.

9. Adverting, now, to Clause 9 (d) of the parent agreement, a reading thereof reveals that, prior to initiating arbitration proceedings, the parties are required to attempt amicable resolution of the disputes. Significantly, however, the provision does not specifically contemplate issuance of a notice, seeking such amiable resolution, by one party to the other. Instead, it states that, in case the Contractor and Project Manager are unable to resolve the dispute amicably within 21 days from the date of receipt of “such communication” by the Project Manager, the same would be settled by way of arbitration. The word “such communication”, as used in the said clause, obviously relates to the communication, by the Contractor to the Project Manager, of the Contractor’s claims.

10. Mr. Rohatgi, learned counsel for the petitioner-Contractor,

points out that the final bill was raised by the petitioner on 16th February, 2018 whereafter, *vide* communication dated 2nd June, 2018 and 7th July, 2018, the respondent wrote back to the petitioner calling on the petitioner to accept the deductions made by the respondent for the final bill of the petitioner. The petitioner rejoined to this request *vide* communication dated 11th July, 2018, protesting against the recoveries effected from its bill. This was followed by emails dated 17th June, 2020 and 25th June, 2020, whereafter notice invoking arbitration was issued by the petitioner only on 9th July, 2020.

11. No amicable resolution of the dispute, therefore, took place, within the period of 21 days contemplated by Clause 9(d) of the parent agreement. In any event, at this distance of time, when over two years and a half have elapsed since 11th July, 2018, when the petitioner objected, in writing, to the deductions made by the respondent from its final bill, no scope, for attempting an amicable resolution of the dispute, remains.

12. In view thereof, I am of the opinion that the petitioner has approached this Court at the appropriate stage, after having exhausted its remedies under the parent agreement, and after failure of the arbitral process contemplated thereby, as required by Section 11(6) of the 1996 Act.

13. Mr. Singh, learned counsel for the respondent, acknowledges the fact that, in the reply filed, no other ground, opposing the appointment of arbitrator, has been raised, but prays that liberty may

be reserved to take up all these grounds, including the jurisdiction of the learned arbitrator to adjudicate on the dispute, before the arbitrator.

14. In view thereof, I am of the opinion that the arbitral procedure stipulated in the parent agreement having failed, this Court is required to appoint the arbitrator.

15. Accordingly, I appoint Mr. Jugal Wadhwa, Advocate (Mob.: 9810036560) as the sole arbitrator to arbitrate on the dispute between the parties. The learned arbitrator would be entitled to fees in terms of the Fourth Schedule to the 1996 Act.

16. The sole arbitrator would file the requisite disclosure under Section 12(2) of the 1996 Act within a week of entering on the reference.

17. The parties are directed to contact the sole arbitrator within one week from receipt of a copy of this order by e-mail from the Registry of this Court.

18. The present petition is allowed in the aforesaid terms, with no orders as to costs.

C. HARI SHANKAR, J.

JANUARY 18, 2021

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