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

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Date of Decision: 29.11.2021

+ **ARB.P. 931/2021**

RAJVEER SINGH

.... Petitioner

Through: Mr. Ashish Verma & Mr. Aranv
Kumar, Advs.

versus

GOVERNMENT OF NCT OF DELHI PUBLIC WORKS
DEPARTMENT CIVIL BUILDING MAINTENANCE
DIVISION

..... Respondents

Through: Mr. Anupam Srivastava, ASC for
GNCTD with Ms. Sarita Pandey, Advocate.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

VIBHU BAKHRU, J. (ORAL)

1. The petitioner has filed the present petition under Section 11 of the Arbitration and Conciliation Act, 1996 (hereafter the 'A&C Act') praying that an arbitrator be appointed to adjudicate the disputes that have arisen between the parties.

2. The respondent had issued a notice inviting eligible contractors for submitting their bid for constructing eight rooms in double storied class rooms, one Laboratory for science, and a staircase at Govt. Girls Secondary School (GGSS) No.2 Sector - V, Dr. Ambedkar Nagar, New Delhi (School ID: - 923050).

3. The petitioner had successfully bid for the said contract and its offer was accepted on 18.05.2013. The scheduled date of commencement of the work was stipulated as 01.08.2013 and the works were to be completed on or before 31.01.2014.

4. There were certain delays in completion of the works, which were finally completed on 10.11.2014. Thereafter, on 29.12.2020, the petitioner submitted its Final Bill. The petitioner states that part payment was made against the Final Bill on 06.06.2017. The respondent disputes the same; according to the respondent, the Final Bill was paid on 06.04.2017.

5. On 24.06.2020, the petitioner addressed a letter to the concerned Executive Engineer, PWD raising certain claims for outstanding payments. These claims were rejected by the concerned Executive Engineer on 06.07.2020. Thereafter, on 18.08.2020, the petitioner filed its claims with the concerned Superintendent Engineer, PWD along with the letter of the Executive Engineer rejecting the same. The Superintendent Engineer, PWD did not entertain these claims as well. Consequently, the petitioner escalated the matter by referring its claims to Chief Engineer, PWD and requested that a Dispute Resolution Committee (DRC) be constituted to examine the petitioner's claims.

6. The petitioner received a letter dated 08.02.2021 from the Chief Engineer informing the petitioner that the DRC had been constituted to resolve the disputes.

7. On 12.02.2021, the petitioner preferred its claim before the DRC.

It is stated that the DRC conducted a meeting on 16.03.2021. However, the disputes remain unresolved. The petitioner sought reference of the disputes to arbitration but the respondent has not concurred to do so.

8. In the aforesaid context, the petitioner filed the present petition.

9. The Arbitration Clause as contained in the General Conditions of Contract (GCC) for Central P.W.D Works as modified by GCC 2010 - Correction Slip No. 3, reads as under: -

“Settlement Of Disputes & Arbitration

Except where otherwise provided in the contract, all questions and disputes relating to the meaning of the specifications, design, 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 or things whatsoever in any way arising out of or relating to the contract, designs, drawings, specifications, estimates, instructions, orders or these conditions or otherwise concerning the works or the execution or failure to execute the same whether arising during the progress of the work or after the cancellation, termination, completion or abandonment thereof shall be dealt with as mentioned hereinafter:

- (i) If the contractor considers any work demanded of him to be outside the requirements of the contract, or disputes any drawings, record or decision given in writing by the Engineer-in-Charge on any matter in connection with or arising out of the contract or carrying out of the

work, to be unacceptable, he shall promptly within 15 days request the Superintending Engineer in writing for written instructions or decision. Thereupon, the Superintending Engineer shall give his written instructions or decision within a period of one month from the receipt of the contractor's letters.

If the Superintending Engineer fails to give his instructions or decision in writing within the aforesaid period or if the contractor is dissatisfied with the instructions or decision of the Superintending Engineer, the contractor may, within 15 days of the receipt of Superintending Engineer's decision, appeal to the Chief Engineer who shall afford an opportunity to the contractor to be heard, if the latter so desires, and to offer evidence in support of his appeal. The Chief Engineer shall give his decision within 30 days of receipt of contractor's appeal. If the contractor is dissatisfied with the decision of the Chief Engineer, the contractor may within 30 days from the receipt of the Chief Engineer decision, appeal before the Dispute Redressal Committee (DRC) along with a list of disputes with amounts claimed in respect of each such dispute and giving reference to the rejection of his disputes by the Chief Engineer. The Dispute Redressal Committee (DRC) shall give his decision within a period of 90 days from the receipt of Contractor's appeal. The constitution of Dispute Redressal Committee (DRC) shall be as indicated in Schedule 'f'. If

the Dispute Redressal Committee (DRC) fails to give his decision within the aforesaid period or any party is dissatisfied with the decision of Dispute Redressal Committee (DRC), then either party may within a period of 30 days from the receipt of the decision of Dispute Redressal Committee (DRC), give notice to the Chief Engineer for appointment of arbitrator on prescribed proforma as per Appendix XV, failing which the said decision shall be final binding and conclusive and not referable to adjudication by the arbitrator. It is a term of contract that each party invoking arbitration must exhaust the aforesaid mechanism of settlement of claims/disputes prior to invoking arbitration.

- (ii) Except where the decision has become final, binding and conclusive in terms of Sub Para (i) above, disputes or difference shall be referred for adjudication through arbitration by a sole arbitrator appointed by the Chief Engineer, CPWD, in charge of the work or if there be no Chief Engineer, the Additional Director General of the concerned region of CPWD or if there be no Additional Director General, the Director General of Works, CPWD. If the arbitrator so appointed is unable or unwilling to act or resigns his appointment or vacates his office due to any reason whatsoever, another sole arbitrator shall be appointed in the manner aforesaid. Such person shall be entitled to proceed with the

reference from the stage at which it was left by his predecessor...”

10. The learned counsel appearing for the respondent does not dispute the existence of an arbitration agreement (Clause 25 of GCC - Arbitration Clause), however, the respondent opposes this petition on the ground that the claims raised by the petitioner are barred by limitation.

11. Mr Srivastav, learned counsel appearing for the respondent states that the respondent has filed a reply to the present petition, however, the same is not on record. He states that there is no dispute as to the existence of the Arbitration Agreement and the parties had agreed that the disputes between the parties would be referred to arbitration. He, however, submits that the claims made by the petitioner are *ex-facie* barred by limitation and therefore, following the principle laid down by the Supreme Court in ***Vidya Drolia v. Durga Trading Corporation: (2021) 2 SCC 1***, the present petition is liable to be dismissed.

12. Mr Srivastav states that in terms of the Arbitration Clause, the petitioner was required to make its claim within a specified period and in any event, within a period of three years from the date of cause of action. He states that in the present case, the petitioner had claimed that part payments were made on 06.06.2017 but the payment of Final Bill was made on 06.04.2017. If the petitioner was dissatisfied with the said payment, it was required to invoke the dispute resolution clause and refer the claims to the Superintendent Engineer within a period of three years from that date. He submits that although, the petitioner had made

a claim before the Executive Engineer, the same was not in terms of the Arbitration Clause. In the aforesaid view, since the claims were first made before the Superintendent Engineer on 18.08.2020, the question whether the claims were barred by limitation is required to be considered with reference to that date. He submits that since this was beyond the period of three years from 06.04.2017, the claims raised by the petitioner are barred by limitation.

13. The petitioner relies upon the orders passed by the Supreme Court in *Suo Motu Writ Petition (Civil) No.3 of 2020* captioned as *In Re: Cognizance for Extension of Limitation* in support of his contention that by virtue of the said order, the period of limitation was suspended with effect from 15.03.2020. Therefore, the petitioner's invocation of the dispute resolution clause was not barred by the statute of limitation. However, Mr Srivastav submits that the said contention is not sustainable as the order dated 23.03.2020 passed by the Supreme Court in *Re: Cognizance for Extension of Limitation (supra)* did not extend the period of limitation for invoking arbitration. He also handed over the copy of the order dated 08.03.2021 passed by the Supreme Court in the above writ petition wherein the Supreme Court had noted as under:-

“Due to the onset of Covid-19 pandemic, this Court took *suo motu* cognizance of the situation arising from difficulties that might be faced by litigants across the country in filing petitions/ applications/ suits/ appeals/ all other proceedings within the period of limitation prescribed under the general law of limitation or under any special

laws (both Central or State). By an order dated 23.03.2020 this Court extended the period of limitation prescribed under the general law or special laws whether compoundable or not with effect from 15.03.2020 till further orders.”

14. He submits that the aforesaid noting makes it amply clear that the period for invoking the arbitration was not extended by the Supreme Court. He submits that only those proceedings where the general law of limitation (the Limitation Act, 1963) applied, were suspended.

15. *Prima facie*, this Court is unable to accept Mr Srivastav’s aforesaid contention. As noted above, the Supreme Court had clearly held that the period of limitation for the specified proceedings as well as ‘*all other proceedings*’ was extended by the order dated 23.03.2020. Thus, the limited question to be considered is whether the invocation of the arbitration falls within the expression ‘other proceedings.’ This Court is of the view that the said question requires to be addressed by examining the plain language of Section 21 of the A&C Act. Section 21 expressly provides that an arbitral proceeding would commence on the date on which the request for the dispute to be referred to arbitration is received by the respondent. According to the respondent, the petitioner was required to file its claims before the Superintendent Engineer, PWD within a period of three years from 06.04.2017 but the request for invocation of the Dispute Resolution Mechanism in this case was received on 18.08.2020.

16. This Court finds no reason to exclude arbitral proceedings from the expression ‘other proceedings’ as used by the Supreme Court in the

order dated 23.03.2020. There is no reason to treat the alternate dispute mechanism different from filing of a civil action (suit) insofar as the period of limitation is concerned. The disruption caused by the outbreak of Covid-19 would equally affect parties from invoking arbitration as it would disable the parties from instituting any civil action in the courts. The Supreme Court was cognizant of the disruption caused by the outbreak of Covid-19 and the measures instituted to combat its spread, while passing the said order. The Supreme Court had accordingly, couched the said order suspending limitation in very wide terms to comprehensively cover all proceedings. By subsequent orders passed in *Suo Motu Writ Petition (Civil) No. 3 of 2020*, the Supreme Court had also clarified that the time for an Arbitral Tribunal to make an award under Section 29A of the A&C Act was also covered.

17. The contention that the Limitation Act 1963, does not apply to arbitral proceedings is also unfounded. The plain language of Section 43 of the A&C Act makes it amply clear that the provisions of Limitation Act, 1963 are applicable to arbitral proceedings. The learned counsel for the respondent had fairly stated that if the reference of the disputes to the Superintendent Engineer was made within a period of three years from 06.04.2017, the same would be within limitation. However, since the period of limitation was suspended with effect from 15.03.2020, as noticed above, the invocation of the dispute resolution clause on 18.08.2020 was within the period of limitation. Thus, this Court is unable to accept that the invocation of the dispute resolution clause is, *ex facie*, barred by limitation

18. In view of the above and considering that there is no dispute as to the existence of the arbitration agreement, this Court considers it apposite to allow the present petition.

19. At this stage, the learned counsel appearing for the parties request that the parties be referred to Delhi International Arbitration Centre (DIAC) and the arbitration be conducted under the aegis of DIAC and in accordance with its rules. The Arbitrator shall be appointed under the rules of DIAC.

20. In view of the consensus between the parties and at their request, the parties are referred to DIAC and are at liberty to approach the Coordinator, DIAC for further proceedings.

21. The Registry is directed to send a copy of this order to the Coordinator, DIAC.

22. The petition is allowed in the aforesaid terms.

VIBHU BAKHRU, J

NOVEMBER 29, 2021

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Click here to check corrigendum, if any