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

% ***Date of decision: 14.12.2021***

+ ARB.P. 1167/2021

GOEL CONSTRUCTION CO. Petitioner

Through Mr. Ankur Gosain, Adv.

versus

DELHI METRO RAIL CORPORATION LTD. Respondent

Through Mr. Ankur Chibber, Adv.

CORAM:

HON'BLE MR. JUSTICE SURESH KUMAR KAIT

J U D G M E N T (oral)

1. The present petition has been filed under Section 11 (6) of the Arbitration and Conciliation Act, 1996 seeking appointment of Sole Arbitrator to adjudicate the disputes with respondent.
2. Petitioner- company claims to be engaged in the business of execution of civil works. Respondent is a company registered under Companies Act, 1956 and is engaged in the business of Mass Rapid Transport System.
3. According to petitioner, respondent floated a Tender bearing No. CCM-18/2015: construction of blowdown plant and shifting of Platform at Sarita Vihar Train Depot and the said work was awarded vide Letter of ARB.P. 1167/2021

Award ("LoA" in short) dated 12.01.2016 for total value of Rs.46,71,462.87/- inclusive of all taxes, duties & levies. The subject work was stipulated to be completed within 180 days, commencing from 7 days after issuance of the LoA, i.e. on/before 18.07.2016. The stipulated date for commencement of work was 18.01.2016 on which, the respondent was to provide hindrance free site, plan and data of the blowdown plant. However, according to petitioner, respondent failed to do so though petitioner's company had mobilized its workforce and equipment for timely completion of the works awarded immediately after the issuance of the LOA. After repeated requests, respondent partly provided site to the petitioner's company in the month of February, 2016 for execution of only 13 units out of 23 units of the quantity given in BOQ as NDSR item number 04 of the LOA, i.e. dismantling of an existing platform, transportation and erection of the same platform at new location, including minor repair (welding and cutting, etc.) as per requirement and complete as per the direction of the Engineer-in-Charge and other relating items to that NDSR.

4. At the hearing, learned counsel for petitioner has submitted that the stipulated date for completion of above mentioned work was 18.07.2016, which expired due to the non-performance of the obligations on the part of

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respondent. The actual date of commencement was 26.12.2016 which is approximately 6 months after the expiration of stipulated date of completion. Furthermore, petitioner requested the respondent vide its letters dated 17.05.2017 and 03.06.2017 to increase petitioner's contract price @ 20% due to the increase in the price of material and labour and GST, which is applicable @ 18% instead of VAT@ 4%, which would result in direct loss of 18% to petitioner or they could opt to settle petitioner's final claims, refund performance guarantee and security deposit, owing to the non-performance of contract on part of the respondent. On 20.07.2017, respondent terminated the work awarded to petitioner- company. Thereafter, disputes arose between the parties.

5. It is further submitted that a legal notice dated 24.11.2020 was served upon respondent to invoke arbitration in terms of Clause 17 of General Conditions of Contract. However, respondent failed to forward suggestion of names of Arbitrators. Hence, the present petition has been filed.

6. Learned counsel for respondent has appeared and submitted that though the averments made in the present petition are disputed, however, there is no objection if the present petition is allowed and sole Arbitrator is appointed to adjudicate the disputes between the parties.

7. In view of the above, the present petition is allowed. Accordingly, **Mr. R.S.Rathi, Advocate (Mobile: 9810868733)** is appointed sole Arbitrator to adjudicate the dispute between the parties.

8. The fee of the learned Arbitrator shall be governed by the Fourth Schedule of the Arbitration and Conciliation Act, 1996.

9. The learned Arbitrator shall ensure compliance of Section 12 of Arbitration and Conciliation Act, 1996 before commencing the arbitration.

10. The present petition stands disposed of accordingly.

11. A copy of this order be sent to the learned Arbitrator for information.

(SURESH KUMAR KAIT)
JUDGE

DECEMBER 14, 2021

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