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

% ***Date of decision: 08.02.2022***

+ **ARB.P. 152/2022**

**M/S GARG BUILDERS THROUGH SHRI SAURABH GARG
PARTNER** Petitioner

Through **Mr. Sanjay Bansal, Adv.**

versus

**SIDCULCONCOR INFRA COMPANY LIMITED
SCICL** Respondent

Through **Mr.CP Rajwar, Mr.Kamal Kumar and
Mr.Aasheesh Gupta, Adv.**

**CORAM:
HON'BLE MR. JUSTICE SURESH KUMAR KAIT**

J U D G M E N T (oral)

The hearing has been conducted through video conferencing.

I.A. 2109/2022 (exemption)

1. Allowed, with direction to file requisite original documents, i.e. Agreement and other documents, as well as notarised/attested affidavit within six weeks.

2. Application is disposed of.

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3. The present petition has been filed by the petitioner seeking appointment of sole Arbitrator to adjudicate the disputes inter-se the parties.



4. As per the averments made in the present petition, the petitioner entered into Agreements dated 31.03.2015 and 15.04.2015 with the respondent for the work of C/o Administrative Building, Business facilities, public utilities, transporters office, station building etc. including allied works at MMLP Pantnagar Uttarakhand for contractual tendered amount of Rs.13,35,74,774/-. The date of commencement & completion of work was 31.03.2015 and 12.03.2016, which was respectively stipulated in the Award Letter. The work was duly completed on 10.08.2017. The value on the date of completion of work was estimated at Rs.16,64,44,946/- against which net payment of Rs.15,11,91,095/- was released. However, despite repeated requests, an amount of Rs.44,91,359/-, is pending towards service tax refund, security deposit, which was not released by respondents.

5. Learned counsel for the petitioner has submitted the Arbitration clause of Agreement provides that the CMD of the respondent shall either adjudicate the disputes themselves or otherwise appoint an independent arbitrator. Accordingly, the petitioner on 05.02.2018 requested the CMD of the respondent to act in terms of the arbitration clause. Subsequently, the petitioner filed a petition ARB. P. 338/2019 on the basis of invocation notice dated 05.02.2019 which was served upon the CMD of Container



Corporation of India Ltd. (CONCUR) because the previous Agreement dated 31.03.2015 was entered with CONCUR. The said petition was disposed of while granting liberty to the petitioner to approach this Court. Thereafter, petitioner again approached this Court with a new petition, i.e. ARB.P. 386/2019 on the basis of the same invocation notice dated 05.02.2019. Respondent filed a reply and took objection to the extent that the petitioner had not served any notice on the respondent for invocation of arbitration in addition to other objections. Therefore, the same was disposed of as withdrawn by the petitioner with liberty to pursue appropriate remedy as per law.

6. Accordingly, petitioner again issued a notice dated 21.10.2019 invoking the arbitration and filed another petition, i.e. ARB.P. 832/2019, to which the respondent filed reply and took a specific objection that the respondent has not received any such notice. Further a plea was taken by the respondent that the petitioner should have waited for 120 days for the respondent to take a decision on its representation (notice dated 21.10.2019) before filing ARB.P. 832/2019 and therefore, the same is premature. Accordingly, the said petition was dismissed as withdrawn with liberty to file a fresh petition if the disputes are not resolved. Thereafter, on



07.01.2022 the respondent replied to the notice of the petitioner dated 21.10.2019 and denied the admissibility of the claims. Hence, the present petition has been filed.

7. During the course of hearing, learned counsel appearing on behalf of the respondent has not opposed the present petition and submits that the claims raised in the present petition are disputed, however, fairly conceded that the disputes inter se parties are arbitrable.

8. Accordingly, the present petition is allowed and **Mr. N. S. Bajwa, Advocate (Mobile: 9811117745)** is appointed as Arbitrator in this case.

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

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

11. The present petition stands disposed of accordingly.

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

(SURESH KUMAR KAIT)
JUDGE

FEBRUARY 08, 2022

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