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

% ***Date of decision: 23.02.2022***

+ **ARB.P. 222/2022 & I.A. 2992/2022**

YFC PROJECTS PRIVATE LIMITED Petitioner
Through **Mr. Vibhor Garg, Mr. Aditya
Bhardwaj, Mr. Keshav Tiwari and
Mr. Sidhant Bhatia, Advs.**

versus

**RAMPRASTHA PROMOTERS AND DEVELOPERS PRIVATE
LIMITED** Respondent
Through **Mr. Sougat Sinha and Ms. R.
Gayathri Manasa, Advs.**

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

J U D G M E N T (oral)

1. The present petition has been filed by the petitioner under Section 11 (6) of the Arbitration and Conciliation Act, 1996 seeking appointment of sole Arbitrator.

2. Learned counsel for petitioner submits that petitioner is a company and is engaged in business of construction and other development activities. Respondent is a non-government company and is a real estate developer running its business operation in NCR region. Respondent during year 2010 obtained licence bearing No.40 of 2010 for development of group housing



society admeasuring 24.53 acres in sector 95 (in short 'Project'). Further, respondent informed the petitioner that it had sold the FSI of the Project to the Army Welfare Housing Organization (AWHO). As per the terms and conditions entered between the AWHO and respondent, the development rights were given to the respondent for construction of Multi Storied Residential Towers and other related work for personal use of member/allottees of AWHO. Respondent in furtherance of the contracts which it had entered with AWHO, issued a letter of intent dated 25.05.2013 in favour of petitioner for execution of certain Civil & Structural Work for a contract price of Rs.80,00,00,000/- in the Project. However, later certain additional works were also awarded to petitioner relating to internal Electrical, Sanitary & Plumbing work through a letter of intent on 10.06.2013 for a total amount of Rs.19,50,00,000/- and for installation of Aluminium sub frames vide Work Order dated 12.07.2014 which was costing around Rs. 41,65,000/-. Since the commencement of work in May 2013, the petitioner faced issues resulting from the lackadaisical attitude of the respondent. There were no proper instructions with respect to the construction activity and the respondent even had constant conflict with AWHO, which resulted in termination of contract by AWHO with



respondent. In spite of satisfactory performance of work in accordance with the drawing and data provided by the respondent, there was considerable delay in the payments.

3. Petitioner further claims that in the year 2016 was informed by respondent that further construction under the contract will not continue, on account of certain disputes which arose between the respondent and AWHO. Thereafter, with mutual consent it was decided that the contract shall stand discharged and the petitioner shall submit final bills for the work done and all payments due towards the pending bills shall be cleared by the respondents. Thereafter, in May 2016, the final bills were also submitted by the petitioner for the work done, which is also acknowledged by the respondent. As such till date a principal amount of Rs. 5,22,97,877/- is still due and payable by the respondent in favour of the petitioner. However, despite the respondent's admitted liability the bills submitted by the petitioner remains unpaid till date. Since the respondent failed to make payment of the above stated liability, petitioner issued a demand notice dated 14.08.2018 demanding payment of the principal amount of Rs. 5,22,97,877/- along with 18 % interest. However, respondent vide its reply dated 23.08.2018 denied its liability and admitted the factum of dispute



between the parties and placed reliance on Clause 69 of the Contract Agreement dated 25.05.2013 and claimed invocation of arbitration. Consequently, petitioner by its legal notice dated 31.12.2021 invoked arbitration which was served upon respondent vide email dated 31.12.2021, however, respondent did not respond. Thereafter, again a reminder notice dated 14.01.2022 was served upon the respondent and despite that, there was no response from respondent. Hence, the present petition has been filed.

4. Learned counsel for respondent has entered appearance on advance notice and submitted that though the claims raised in the present petition are disputes, however disputes are arbitrable and Sole Arbitrator be appointed to adjudicate the dispute between the parties.

5. Accordingly, the present petition is allowed and **Mr. Justice (Retd.) Jayant Nath (Mobile: 8527959494)** is appointed sole Arbitrator to adjudicate the dispute between the parties. Needless to say, all the issues between the parties shall remain open before the learned Sole Arbitrator.

6. The arbitration shall be conducted under the Delhi International Arbitration Centre (DIAC). The fee of the Arbitrator shall be in accordance with the Schedule of Fees prescribed under the Delhi International Arbitration Centre (DIAC) (Administrative Cost and Arbitrators Fees)



Rules, 2018.

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

8. The present petition is accordingly disposed of. Pending application is disposed of as infructuous.

(SURESH KUMAR KAIT)
JUDGE

FEBRUARY 23, 2022

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