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

% Judgment delivered on: 06th May, 2022

+ **ARB.P. 257/2022**

KIRAN INFRA ENGINEERS LIMITED Petitioner

versus

NORTHERN RAILWAY THROUGH GENERAL MANAGER
.....Respondent

Advocates who appeared in this case:

For the Petitioner: Mr. Deepak Biswas and Mr. Ambuj Tiwari, Advocates.

For the Respondent: Mr. Sush Kumar Pandey, Senior Panel Counsel, Mr. Sahaj Garg and Mr. Rahul Maurya, Advocates.

CORAM:-

HON'BLE MR. JUSTICE SANJEEV SACHDEVA

JUDGMENT

SANJEEV SACHDEVA, J

I.A. 6361/2022

1. Respondent seeks condonation of 10 days' delay in filing the reply.

2. For the reasons stated in the application, the application is allowed. The reply is taken on record.

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1. Petitioner seeks appointment of an Arbitral Tribunal pursuant to

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the contract dated 01.04.2013.

2. Respondents in their reply contend that the agreement was superseded by a supplementary agreement dated 08.05.2017, which specifically stipulates that the principal agreement stands fully discharged and all terms and conditions including the arbitration clause stand rescinded.

3. Learned counsel for the petitioner contends that the supplementary agreement does not rescind or take away any right of the petitioner to initiate appropriate proceedings in accordance with law and that the agreement is hit by Sections 16 and 23 of the Indian Contract Act, 1872.

4. Learned counsel submits that the petitioner was made to sign the supplementary agreement, failing which the payment of over would not have been released to the petitioner.

5. This is disputed by learned counsel for respondent.

6. The arbitration clause contained in the subject principal contract provides as under:-

“40.1 ARBITRATION

(i) In the event of any dispute or difference between the parties hereto as to, the construction or operation of this contract, or the respective rights and liabilities of the

parties on any matter in question, dispute or difference on any account or as to the withholding by the Railway of any certificate to which the contractor may claim to be entitled to, shall be referred by the contractor to the GM and the GM shall be within 120 days after receipt of the contractor's representation make and notify decisions on all matters referred to by the contractor in writing or if the GM fails to make a decision within 120 days, then and in any such case, but except in any of the 'excepted matters' (matters not arbitrable any decision of the Rly authority, thereon shall be final and binding on the contractor, provided further that 'excepted matters' shall stand specifically excluded from the purview of the arbitration clause), the contractor, after 120 days but within 180 days of his presenting his final claim on disputed matters shall demand in writing that the dispute or difference be referred to Arbitration.

(ii) The demand for arbitration shall specify the matters which are in question or subject of the dispute or difference as also the amounts of claim item-wise. Only such dispute(s) or difference(s) in respect of which the demand has been made, together with counter claims or set off, given by the Railway, shall be referred to arbitration and other matters shall not be included in the reference.

- (a) The Arbitration proceedings shall be assumed to have commenced from the day, a written and valid demand for arbitration is received by the Railway.*
- (b) The claimant shall submit his claim stating the facts supporting the claims along with all relevant documents and the relief or remedy sought against each claim within a period of 30 days from the*

date of appointment of the Arbitral Tribunal.

(c) *The Railway shall submit its defence statement and counter claims, if any within a period of 60 days of receipt of copy of claims from Tribunal thereafter, unless otherwise extension has been granted by Tribunal.*

(iii) *No new claim shall be added during proceedings by either party. However party may amend or supplement the original claim or defence thereof during the course of arbitration proceedings subject to acceptance by Tribunal having due regard to the any objection in making it.*

(iv) *If the contractor(s) does/do not prefer his/their specific and final claims in writing, within a period of 90 days of receiving the intimation from the Railways that the final bill is ready for payment, he/they will be deemed to have Waived his/their claim(s) and the Railway shall be discharged and released of all liabilities under the contract in respect of these claims.”*

7. It is not in dispute that the contract agreement between the parties contains an arbitration clause. The contention of the respondent is that by execution of the supplementary agreement, the principal agreement stands finally discharged and all terms and conditions including the arbitration clause stand rescinded.

8. Perusal of the supplementary agreement dated 08.05.2017 shows that no further obligation was cast by the said agreement on

either of the parties to perform any further condition.

9. The alleged supplementary agreement prima facie seems to suggest that payment was being released to the petitioner subject to the petitioner signing the said document.

10. The terms and conditions recorded in the supplementary agreement *inter-alia* read as under:-

“And-whereas it was agreed by and between the parties hereto that the work would be completed by the party hereto of the second part on date 31.05.2017 last extended and whereas the party hereto of the second part has executed the work to the entire satisfaction of the party hereto of the first part. And party hereto of the first part already made payment of the party hereto of the second part diverse sums from time to time aggregating to Rs.6,84,82,421.84 including the final bill bearing voucher No-- 220517, Dt. 09.05.2017, (the receipt of which is hereby acknowledged by the party hereto of the second part in full and final settlement of all his/its claims under the principal amount).

And whereas the party hereto of the first have received further sum of Rs 73,54,83774 through the final bill bearing voucher No 220517, Dt. 09.05.2017 (The receipt of which is hereby acknowledged by the party hereto of the second part in full and final settlement of all h his/its claims under the principal agreement)

Now it is hereby agreed by & between the part~ in the consideration of sums already paid by the party hereto of

the first part to the party hereto of the second part against all outstanding dues claims for all works done under the' aforesaid principal agreement including/excluding the security deposit the party hereto of the second part have no further dues of claims against the party hereto the first part under said Principal agreement. It is further agreed by and between the parties that the party hereto of the second part has accepted the said sums mentioned above in full and final satisfaction of all it dues and claims under the said Principal agreement.

It is further agreed and understood by and between parties that in consideration of the payment already made, under the agreement, the said Principal Agreement shall stand finally discharged and rescinded all the terms and conditions including the Arbitration clause.

It is further agreed and understood by and between the parties that the arbitration clause contained in the said principal agreement shall cease to have any effect and/or shall be deemed to be non-existent for all purposes.”

11. The question as to whether the supplementary agreement is a full and final discharge of respective obligations under the principal agreement and also rescinds the terms and conditions of the principal agreement is itself in dispute, which requires to be referred to Arbitral Tribunal.

12. The disputes raised by learned counsel for the petitioner that

agreement is hit by Sections 17 and 23 of the Indian Contract Act as the petitioner was forced to sign the said agreement under duress and undue influence and also that the agreement is contrary to law as it takes away the right of the petitioner to invoke arbitration, in my view are disputes which the Arbitral Tribunal would be competent to rule upon, if so raised before it.

13. No other objection is raised by the Respondent. Consequently, the petition is allowed. The disputes are referred to arbitration.

14. Ms. Amrit Kaur Oberoi, Advocate (Mobile # +91 9899347698; Chamber No. 505, Lawyers Chamber Block – III, Delhi High Court, New Delhi) is appointed as the sole Arbitrator to adjudicate the claims and counter-claims, if any, of the parties.

15. The fee of the Arbitral Tribunal shall be in accordance with the fourth schedule of the Arbitration and Conciliation Act.

16. The arbitrator shall make the necessary disclosure under section 12 of the Arbitration and Conciliation Act, 1996 within one week of entering reference.

17. Petition is disposed of in the above terms.

SANJEEV SACHDEVA, J

MAY 6, 2022/NA

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