

* IN THE HIGH COURT OF DELHI AT NEW DELHI

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Reserved on: 14th September, 2022

Decided on: 1st November, 2022

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ARB.P. 544/2022

M/S G.D. BUILDERS

Office at 201-A, Apra Plaza,
Plot no. 29, Community Centre,
Rani Bagh, Pitampura, Road no. 44,
Delhi-110034

Through its Partner
Sh. Suresh Kumar Gupta

.....PETITIONER

Through: Mr. Avinash Trivedi, Advocate.

versus

M/S KLJ DEVELOPERS PVT. LTD.

Corporate Office At:- KLJ House,
8-A, Shivaji Marg, Najafgarh Road,
New Delhi-110015

Also at

Regd. Office: KLJ House, 63,
Rama Marg, Najafgarh Road,
New Delhi-110015

Through its Director/Directors

.....RESPONDENT

Through: Mr. A.K. Thakur, Mr. Rishi Raj and
Mr. Sujeet Kumar, Advocates.

CORAM:

HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

JUDGEMENT

1. A petition under Section 11(6) of the Arbitration & Conciliation Act,

1996 (hereinafter referred to as “*the Act*”) has been filed for appointment of the Arbitrator to adjudicate the disputes between the parties.

2. It is submitted in the petition that the respondent issued a Letter of Intent bearing reference No.KLJ/DP/FBD/LOI/2012-13/06 on 02.06.2012 for total contractual amount of ₹2,09,55,000/-. The Work Order KLJ/DP/FBD/WO/2012-13/08 dated 10.06.2012 containing terms and conditions of the work was issued in favour of the petitioner Partnership Firm. The respondent also awarded the work of external development of “Platinum Floors” (Pocket-G)-Group Housing Project at Village Neemka, Sector-77, Faridabad (Haryana) vide Letter of Intent bearing ref. no. KLJ/DP/FBD/LOI/2012-13/07 on 02nd June, 2012 for total contractual amount of ₹47,00,000/- to the petitioner. The period of contract for both the Works was nine months which was to commence from 15th June, 2012 and the date of completion was 14th March, 2013.

3. During the course of the execution of the work, the respondent made three amendments in the Agreement modifying the scope of work and the contractual amount last stated was Rs.70,52,359/-. During the course of execution of the work, the respondent made seven amendments in the Agreement thereby increasing the contract amount to Rs.3,70,68,517/- through 7th Amendment dated 11th September, 2015.

4. The petitioner completed the entire work of Pocket-G. Thereafter, on the request of the petitioner vide letter dated 12th March, 2015, the respondent acknowledged that the work was completed *vide* letter dated 18th March, 2015. Similarly, the work of Pocket-A was completed and taken over by the respondent. No Notice of defects was ever issued by the respondent regarding the completion of both Work Orders.

5. The respondent had agreed to reconcile and pay the Final Bill after completion of entire work awarded to the petitioner at Faridabad and Bahadurgarh, Haryana. The petitioner was not allowed to execute further work of Bahadurgarh since October, 2013. However, the work of Faridabad was completed in April, 2017 and handed over the remaining executed work which was to be handed over on or before 15th May, 2017.

6. Since the execution of Work, petitioner had been pursuing its case to finalize the contract at Bahadurgarh and Faridabad and several meeting were held. But the respondents neither finalized the contract nor paid the legal dues of the petitioner.

7. The respondent sent a Notice under Section 21 of the Act dated 25th December, 2021 raising claims of ₹5,71,71,845/- against the work Orders No. 05 dated 15th February, 2008, No. 07 dated 30th July, 2010 and No. 08 and 09 dated 10th June, 2012 awarded by the respondent to the petitioner. The petitioner vide its reply dated 24th January, 2022 sent through email and speed post, raised its own Claims which were denied by the respondent vide their reply dated 15th March, 2022.

8. It is asserted that disputes have arisen between the parties in respect of release of amount for the work done by the petitioner. The work order dated 10th June, 2012 contained Arbitration Clause No.29 which provides for settlement of disputes through Arbitration. A prayer is, therefore made that a Sole Arbitrator may be appointed.

9. **Learned Counsel for the respondent** has not disputed the Arbitration Clause for resolution of the disputes that may arise between the parties in respect of the Work Orders but has essentially challenged the present petition on the ground of Limitation. It is submitted that as per the

petitioner himself, the Work was completed on 18th March, 2015 and the additional work was completed on 15th May, 2017. The Letter of Invocation of Arbitration has been issued only on 02nd February, 2022 which was also by way of reply to the Notice of the respondent claiming amounts and seeking referral of the disputes to Arbitration. It is vehemently argued that the petition is hopelessly barred by limitation and is liable to be dismissed. Learned Counsel has relied upon the case of Vidya Drolia & Ors. v. Durga Trading Corp. (2021) 2 SCC 1 to argue that it is the bounden duty of the Court at the stage of referring the matter to the Arbitrator to weed out the dead wood i.e the cases which are patently barred by limitation.

10. Submissions heard.

11. The specific averments made by the petitioner are that additional Work was completed on 15th May, 2017. The petitioner has also referred to a letter dated 25th February, 2016 of the respondent wherein it had asserted that all the Claims of the petitioner shall be settled after the completion of the work at Faridabad. It is not in dispute that the Work Orders pertain to Faridabad and Bahadurgarh and the respondent had taken a stand of settling all the Claims together on completion of entire work.

12. Furthermore, the Hon'ble Supreme Court of India Suo Moto in Cognizance for Extension of Limitation, In re (2022) 3 SCC 117 has excluded the period from March, 2020 till February, 2022 while computing the period of limitation.

13. Mixed question of fact and law have arisen in respect of the limitation. It is not a case where the claims of the petitioner are patently barred by limitation. In this context, it may not be over looked that the respondent itself has raised claims for various amounts and sought

Invocation of Arbitration vide its Notice dated 25th December, 2021.

14. The respondent is at liberty to raise his rights and contentions including limitation before the Learned Arbitrator.

15. For the aforesaid reasons, the petition succeeds and the following directions are made:

- a) Justice G.S. Sistani, High Court of Delhi (Retd.) [Mobile No. 9871300034] is appointed as the Arbitrator to adjudicate the disputes between the parties under the work Order dated 10th June, 2012 containing Arbitration Clause No.29.
- b) On the request of learned Counsel for the parties, it is directed that the arbitration will be held under the aegis of the Delhi International Arbitration Centre, Delhi High Court, Shershah Road, New Delhi.
- c) The learned Arbitrator is requested to make a declaration in terms of Section 12 of the Act prior to entering upon the reference.
- d) The remuneration of the learned Arbitrator will be computed in terms of Schedule IV of the Act or as may be otherwise agreed between the Arbitrator and the parties.

16. It is made clear that the rights and contentions of the parties are left open, including any plea raised by the respondent as to the arbitrability of any particular claim made before the learned Arbitrator.

(NEENA BANSAL KRISHNA)
JUDGE

NOVEMBER 1, 2022

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