

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

%

Reserved on: 14th September, 2022

Decided on: 1st November, 2022

+

ARB.P. 545/2022

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.

2. It is submitted in the petition that respondent sister concern M/s Caddilac Buildwell Pvt. Ltd. had invited tender for “*Construction of Group Housing “KLJ Heights” at Sector -15, Village Kassar Bahadurgarh, Haryana*”. The petitioner was declared as successful bidder. Respondent had issued a letter of intent bearing ref.no. KLJ/CD/BGH/2009-10/01 on 02nd June, 2009 on total contractual amount of Rs. 8,44,90,848/-. The work order no. KLJ/CD/BGH/2009-10/02 dated 09th June, 2009 was issued by the respondent to the petitioner which contains the terms and conditions of this work. As per Clause 7 of the Work Order, the period of completion of work was 35 months from the date of work order. The defect liability period was 12 months from the date of handing over of the complete site in terms of clause 15 of work order. The petitioner has stated that there was initial delay in the execution of work due to the water logging and dewatering by the other agency. The work was revised from four Towers to seven Towers and was intimated through letter dated 07th May, 2010 by the respondent. Seven amendments were made in the original Agreement. The last amendment was made on 22nd August, 2013. The petitioner has submitted that it has received Rs.16,69,29,822/- towards the execution of the work, but the respondent has failed to pay the balance amount of Rs. 94,17,255/-. The petitioner is also entitled to Rs. 38,54,221/- which is the cost of material lying at the site which the respondent has not permitted the petitioner to remove. The petitioner had also not been allowed to execute further work by the respondent from October, 2013. However, the respondent has already passed the 38th and final bill of Rs. 17,45,84,122/- on 16th September, 2014.

3. The petitioner has sent a letter dated 10th June, 2014 about the foreclosure of the Contract and also made a request for release of Final Bill amount, cost of materials, retention money and other amounts. The respondent gave its reply vide letter dated 27th September, 2014. The petitioner gave its response to the reply vide its letter dated 13th November, 2014. Even thereafter, several meetings have been held, though the Contract could not be finalized and the due amounts were not paid.
4. The petitioner wrote a letter dated 10th February, 2016 to which a reply was given by the respondent on 25th February, 2016 in indicating that all the Claims of the petitioner shall be settled after completion of work at Bahadurgarh and Faridabad.
5. It is claimed that even after the completion of work awarded to the petitioner at Bahadurgarh and Faridabad, the settlement of the amount has not been finalized.
6. The respondent sent a Notice dated 4th January, 2022 under Section 21 Arbitration & Conciliation Act illegally claiming Rs. 3,02,31,934/- against the Work Order dated 09th June, 2009 awarded by the respondent to the petitioner. The petitioner sent a reply dated 02nd February, 2022 which was responded to by the respondent dated 15th March, 2022 denying the claims of the petitioner.
7. 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 09th June, 2009 contained Arbitration Clause No. 28 which provides for settlement of disputes through Arbitration. A prayer is, therefore made that a Sole Arbitrator may be appointed.
8. 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 Order, but has essentially challenged the present petition on the ground of limitation. It is submitted that that the work was duly completed by the petitioner. 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 referring 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/s 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.

9. Submissions heard.

10. The specific averments made by the petitioner that the work was completed and has also referred to a letter dated 25th February, 2016 of the respondent wherein the respondent 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.

11. 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. Mixed question of fact and law have arisen in respect of the 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 04th January, 2022. It is not a clear cut case of the claims of the petitioner being barred by limitation.

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

13. For the aforesaid reasons, the petition succeeds and is disposed of with the following directions:

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 09th June, 2009 containing Arbitration Clause No. 28.

b) On the suggestion 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 per the consent of the parties.

14. 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

va