

* **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. 546/2022

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

J U D G E M E N T

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 KLJ Town Planners Pvt. Ltd. had invited tender for “*Residential Group Housing Project at Sector-77, KLJ Greens, Village Neemka, Faridabad, Haryana*”. The petitioner was declared as successful bidder. Respondent had issued a letter of intent bearing ref.no. KLJ/TP/FBD/2007-08/04 dated 09th January 2008 on total contractual amount of ₹27,95,05,150/-. The fresh work order no. KLJ/TP/FBD/2007-08/05 dated 15th February, 2008 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 dated 15th February, 2008, the period of completion of work was 30 months i.e. from 1st March, 2008 to 31st August, 2010. The defect liability period was 12 months from the date of handing over of the complete site in terms of clause 2 of letter of intent. the work was not commenced as the drawing for excavation was given by the respondent company on 01st May, 2008 and setting layout plan, column layout plan and reinforcement details were given on 17th May, 2008 and 02nd June 2008 respectively, therefore, there was delay in execution of work from 1st March 2008 to 2nd June 2008, which was attributed to the respondent company. Till 17th March, 2015, the rates/scope and value of the contract were revised 20 times and the contractual amount increased to ₹40,29,33,712/-.

3. The petitioner had completed the entire work on 30th April, 2017 and even prior to that handed over some towers, and the remaining towers were handed over before 10th May, 2017. The petitioner had also completely removed its T&P and materials from the site between 10th May, 2017 to 15th May, 2017.

4. The petitioner had submitted the Final Bill before 20th March, 2018 of the total amount of ₹2,00,67,062/-. Several meetings were held between the partners of petitioner and the director and representatives of the respondent. Every time in the meetings, only assurances were given by the respondent company.

5. It is claimed that despite repeated verbal assurances given by the respondent for making due payment to the petitioner, the respondent has failed to honour its commitments.

6. The respondent sent a Notice dated 25th December, 2021 under Section 21 of the Act illegally claiming ₹5,71,71,845/- against the Work Order 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, to which the petitioner had sent a reply dated 24th January, 2022. The petitioner had also petitioner had sent a legal notice dated 18th January, 2022 thereby invoking arbitration clause and raising legally tenable claims, which was responded by the respondent in their reply 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 15th February, 2008 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 18th January, 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. 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. 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 overlooked that the respondent itself has raised claims for various amounts and sought Invocation of Arbitration vide its Notice dated 18th January, 2022. It is not a clearcut case of the claims of the petitioner being barred by limitation.

11. The respondent is at liberty to raise his rights and contentions

including limitation before the Learned Arbitrator.

12. 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.

13. 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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