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

% ***Date of decision: 17.01.2022***

+ **ARB.P. 1085/2021**

SUBHASH CHANDER Petitioner

Through **Mr. Bhupesh Narula, Adv.**

versus

DELHI DEVELOPMENT AUTHORITY Respondent

Through **Mr. Akshay Chandra, Advocate on
behalf of Ms. Shobhna Takiar,
Standing Counsel**

CORAM:
HON'BLE MR. JUSTICE SURESH KUMAR KAIT

J U D G M E N T (oral)

1. The present petition has been filed under Section 11(6) of the Arbitration and Conciliation Act, 1996 seeking appointment of sole Arbitrator to adjudicate the disputes inter se the parties.

2. As per the averments made in the present petition, petitioner is a construction contractor. Respondent had invited the tender for the work of “D/o main land including 60 Mtr. & 45 Mtr. Master Plan road in Dwarka project phase-II (D/o Sector-23B, 24, 25 & 26) Subhead: Providing and laying peripheral sewer line sector-25 Dwarka Phase-II.” The work was awarded to the petitioner through acceptance letter No. F31(1695)EE/WD-ARB.P. 1085/2021

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3/DDA/A/958 dated 09.11.2017 and agreement to the same effect was on 14.11.2017. Respondent is the custodian of the said agreement and as per the contract, the stipulated dates of commencement and completion for the above work were 19.11.2017 and 17.05.2018 respectively. However, according to petitioner, the work could not be completed within the stipulated time due to various hindrances on the part of the respondent, i.e. non-availability of site and breaches of contract attributable to the respondent. For these reasons, the work which was to be completed on 17.05.2018 was completed belatedly on 06.09.2018. Petitioner further claims that the work was completed on 06.09.2018 to the satisfaction of the respondent, which was duly accepted by respondent by issuing completion certificate.

3. It was next submitted that the respondent had granted extension of time to the petitioner but for the extended time period, no additional compensation was given. Further, as per the agreement, petitioner was required to submit final bill on or before 05.12.2018, however, respondent made it impossible for the petitioner to submit the same by the due date as it had completely failed to jointly record the final measurements in terms of the agreement and also not provided the copies of sanctioned



extra/substituted and deviated items without which submission of final bill was not possible. Learned counsel submitted that as per Clause 9 of the agreement, respondent was to release the final payment to petitioner within 6 months after the completion of work i.e. on or before 05.03.2019 but the same was not done. Thereafter, disputes arose between the parties. Since Respondent was not releasing payments, the petitioner invoked arbitration clause 25 of agreement and vide notice dated 31.07.2019 requested respondent to appoint an arbitrator.

4. Thereafter, the Engineer in charge called upon the petitioner for a meeting on 20.12.2019 and informed that he had prepared and passed the final bill without disclosing the amount. However, he informed that the amount of the bill was to the tune of 1.25 crore and showed his helplessness to release the payment unless the petitioner withdraws the application for appointment of Arbitrator. Subsequently, the petitioner agreed upon and withdrew the said application. Thereafter, disputes again arose between the parties and the petitioner once again invoked arbitration on 12.07.2021 and referred the disputes to the Chief Engineer for adjudication, however, the Chief Engineer failed to resolve the dispute within statutory period i.e. 30 days, provided under the arbitration clause of agreement. Petitioner further



on 16.08.2021 and 15.09.2021, requested the Engineer Member of the respondent to appoint Arbitrator, which was not done. Hence, the petitioner has filed the present petition.

5. During the course of hearing, learned counsel appearing on behalf of respondent has disputed the averments made in the present petition, however, submitted that the issues are triable and this Court may appoint an Arbitrator to adjudicate the dispute between the parties subject to all issues remain open before the learned Arbitrator.

6. Accordingly, **Mr. Amar Nath, DHJS (Retd.) (Mobile: 9958697030)** is appointed sole Arbitrator to adjudicate the dispute between the parties.

7. The fee of the learned Arbitrator shall be governed by the Fourth Schedule of the Arbitration and Conciliation Act, 1996.

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

9. The present petition stands disposed of accordingly.

10. A copy of this order be sent to the learned Arbitrator for information.

(SURESH KUMAR KAIT)
JUDGE

JANUARY 17, 2022/rk