

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

% **Date of order: 21st December, 2022**

+ **ARB.P. 1250/2022**

MS BBR (INDIA) PRIVATE LIMITED Petitioner

Through: **Mr. M. Dutta, Mr. P.C. Gupta and
Mr. Aditya Guha, Advocates.**

versus

MS ATS HOUSING PRIVATE LIMITED Respondent

Through: **Mr. Rahul Malhotra, Adv.**

**CORAM:
HON'BLE MR. JUSTICE CHANDRA DHARI SINGH**

ORDER

CHANDRA DHARI SINGH, J (Oral)

I.A. 18557/2022 (Exemption)

Exemptions allowed subject to just exceptions.

The applications stand disposed of.

ARB.P. 1250/2022

1. The present petition has been filed on behalf of the petitioner seeking the appointment of a Sole Arbitrator under the provision of Section 11 of the Arbitration and Conciliation Act, 1996 *qua* the dispute arising out of the Standard Terms and Conditions of Contract and Work Order.

2. Learned counsel for the petitioner submitted that the Petitioner is a

Civil Engineering Contractor working in and around National Capital Territory of Delhi on a wide range of civil engineering projects, from conception to completion. The respondent is an entity inside the ATS Group, of which it is a subsidiary.

3. It is submitted on behalf of the petitioner the respondent's primary business activity consists of building residential properties in the National Capital Territory of Delhi. The respondent hired the petitioner to carry out the tasks outlined in the contract.

4. Learned counsel for the petitioner further submitted that respondent contracted petitioner for "Post Tensioning Work" at their Project named "ATS Pristine, Sector-150, Noida, U.P." via Letter of Intent / Award dated 22nd November, 2014.

5. It is submitted that respondent thereafter, issued a Work Order dated 28th September, 2017 in favour of petitioner, outlining the provisions of the contract, including the scope of work, contract price, start and end dates, and general terms and conditions.

6. It is submitted by the learned counsel appearing for the petitioner that the petitioner was responsible for finishing the job in issue that was given to them by the work order. With the work order, the petitioner expressed concern regarding the ongoing and periodic Bill(s). After making the appropriate adjustments for the amount that was received in payment of the bill or bills that were incurred due to the Project, it was discovered that the petitioner is still owed a total amount that is due, payable, and overdue in the amount of Rs.17,34,802/- (Rupees seventeen lakhs thirty four thousand eight hundred two).

7. It is submitted that the petitioner made numerous statements and requests to the respondent in an effort to get the aforementioned debts paid off. The respondent neglected to pay and present the dues of the Petitioner despite absence of any objection, complaint, or grievance.

8. It is submitted that the Work order provides for the dispute resolution clause whereby the disputes between the Parties shall be resolved by binding arbitration in accordance with Clause 25. It is further submitted that the respondent's director must select and appoint the sole arbitrator in order to arbitrate the disputes arising between the parties.

9. It is further submitted that in consequence thereto, the petitioner was forced and compelled to issue a formal notice on 14th March, 2020 demanding the payment of their dues or, as an alternative, the constitution of an Arbitral Tribunal or Sole Arbitrator.

10. Learned counsel on behalf of the respondent vehemently opposed the averments made by learned counsel for the petitioner, however it is accepted that dispute in question are arbitral in nature. It is also submitted that there is no objection if the instant dispute is referred by the Court to a sole arbitrator.

11. As agreed on behalf of the parties, it is evident that the parties intend the Court to refer the disputes to arbitration, by appointing a sole arbitrator. In view of the request made by the parties, to resolve the dispute, the said disputes and differences arising between the parties are referred to arbitration, by appointing an arbitral tribunal. Hence, the following Order:

ORDER

- (i) Ms. Radhika Bishwajit Dubey, Advocate is appointed as a sole arbitrator to adjudicate the disputes between the parties which have arisen under the Work Order dated 28th September, 2017;
- (ii) The learned sole arbitrator, before entering the arbitration reference, shall ensure the compliance of Section 12(1) of the Arbitration and Conciliation Act, 1996;
- (iii) The learned sole arbitrator shall be paid fees as prescribed under the Fourth Schedule of the Arbitration and Conciliation Act, 1996;
- (iv) At the first instance, the parties shall appear before the learned sole arbitrator within 10 days from today on a date which may be mutually fixed by the learned sole arbitrator;
- (v) All contentions of the parties are expressly kept open;
- (vi) A copy of the order be forwarded to the learned sole arbitrator on the following address:

Ms. Radhika BishwajitDubey
F-18, 3rd floor, Geetanjali Enclave, New Delhi
110017
Ph. No.+91 98280-31813/63910-06169
E-mail ID - radhika.arora21@gmail.com

12. The petition is disposed of in the aforesaid terms along with pending applications, if any.

13. The order be uploaded on the website forthwith.

(CHANDRA DHARI SINGH)
JUDGE

DECEMBER 21, 2022

Tp/ug

Click here to check corrigendum, if any

