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IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of Decision: 02.02.2023

+ ARB.P. 111/2023

M/S METHODEX SYSTEMS PRIVATE LIMITED

..... Petitioner

Through: Ms.Risha Mittal, Adv.

versus

GOVT OF NCT OF DELHI AND ANR.

..... Respondents

Through: Ms.Hrishika Jain, Adv. for
Mr.Shadan Farasat, ASC,
GNCTD.

CORAM:

HON'BLE MR. JUSTICE NAVIN CHAWLA

NAVIN CHAWLA, J. (Oral)

I.A. 1991/2023(exemption)

1. Allowed, subject to all just exceptions.

ARB.P. 111/2023

2. This petition has been filed under Section 11(6) of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as the 'Act') seeking appointment of an Arbitrator for adjudicating the disputes that have arisen between the parties in relation to Tender Agreement bearing NIT No. 10/EE(Edu.)/M/C&ND/PWD/2019-

Signature Not Verified

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Signing Date: 03.02.2023

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Arb.P. 111/2023

Page 1 of 5

20 for providing furniture in various government schools for additional classrooms under Education Zone 14,15,16,17 & 18 Distt. West New Delhi, PWD, Package 3.

3. The Arbitration Agreement between the parties is contained in Clause 25 of the General Conditions of Contract (in short, 'GCC').
4. Disputes having arisen between the parties, the petitioner vide letter dated 04.05.2022, requested the Chief Engineer to refer the disputes to the Dispute Redressal Committee (in short 'DRC').
5. Having failed to receive any response, the petitioner invoked the arbitration agreement vide notice dated 29.07.2022.
6. The respondent no.1, however, vide letter dated 25.08.2022 referred the dispute to the DRC. The DRC denied the claim of the petitioner in the Minutes of Meeting held on 12.09.2022 and communicated the same to the petitioner on 29.11.2022.
7. The petitioner has thereafter filed the present petition.
8. The learned counsel for the respondent submits that in terms of Clause 25, the petitioner was to raise its dispute with the DRC within a period of 15 days of the dispute having arisen between the parties. She submits that in the present case, the dispute primarily relates to the invocation of the bank guarantee on 17.02.2022. The petitioner had requested the Chief Engineer to refer the dispute to the DRC only vide letter dated 04.05.2022. The same was beyond the time prescribed.

9. She further submits that in the present case, the petitioner had invoked the arbitration agreement on 29.07.2022, that is, prior to the decision of the DRC. She submits that, therefore, the invocation is not in terms of Clause 25 of the GCC.
10. As far as the delay in requesting the Chief Engineer to refer the dispute to the DRC is concerned, the petitioner states that the petitioner had earlier filed a petition under Section 9 of the Act, being OMP(I) (COMM) 71/2022 titled as ***Methodex Systems Private Limited v. Public Work Department GNCTD & Anr.*** As the bank guarantee stood encashed and dispute arose between the parties, the petitioner sent a notice dated 21.04.2022 to the respondent requesting for payment of the outstanding amount. It is on non-payment of the same, that the dispute arose between the parties. She submits that therefore, request for reference of the dispute to DRC was within the time stipulated.
11. As far as the objection on the invocation of the arbitration being prior to the decision of the DRC is concerned, the learned counsel for the petitioner has submitted that in terms of Clause 25 of the GCC, the DRC is to give its decision within a period of 60 days. The clause further provides that in case no decision is received, the petitioner can invoke the arbitration agreement. She submits that in the present case, as no decision was received from the DRC within the stipulated period of 60 days, the petitioner invoked the arbitration agreement vide notice dated 29.07.2022. The later participation of the petitioner in the DRC proceedings

was without prejudice to such invocation and therefore, the later decision of the DRC cannot nullify the invocation of the arbitration already made.

12. I find *prima facie* merit in the submission made by the learned counsel for the petitioner. Dispute would arise only upon the demand being made by the petitioner vide its letter/notice dated 21.04.2022 and denial thereof by the respondent. The request for reference of the disputes to DRC was made within time vide letter dated 04.05.2022.
13. As far as the invocation being made prior to the decision of the DRC, the decision of the DRC was to be communicated within a period of 60 days to the petitioner. The same having not been done, a right accrued to the petitioner to invoke the arbitration agreement. Subsequent invitation of the respondent for the petitioner to participate in the DRC proceedings and/or such participation by the petitioner cannot defeat the right that had already accrued in favour of the petitioner.
14. In any case, as the existence of the arbitration agreement is not disputed by the respondent, these are questions which can be left for the final adjudication by the learned Arbitrator.
15. Accordingly, I appoint Ms.Bimla Makin, Retired District & Sessions Judge (Mobile-9910384624) as the Sole Arbitrator. The learned Arbitrator shall give the disclosure in terms of Section 12

of the Act before entering upon the reference. The fee of the learned Arbitrator shall be governed by Schedule IV of the Act.

16. It is clarified that all objections of the respondents are left open, and any observation made hereinabove, is only *prima facie* in nature and for purpose of the present petition.
17. The petition is allowed in the above terms.

FEBRUARY 2, 2023
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NAVIN CHAWLA, J

