

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

% **Date of order : 12th April, 2023**

+ **ARB.P. 1333/2022**

RAMA CIVIL INDIA CONSTRUCTION PVT LTD Petitioner

Through: **Mr. Somiran Sharma and Mr.
Dhrubajit Saikia, Advocates**

versus

DELHI TRANSCO LIMITED Respondent

Through: **Mr. Prashant Mehk and Ms. Aarya
Mehra, Advocates**

CORAM:

HON'BLE MR. JUSTICE CHANDRA DHARI SINGH

ORDER

CHANDRA DHARI SINGH, J (Oral)

1. The instant petition under Section 11 of the Arbitration and Conciliation Act, 1996 has been filed on behalf of the petitioner seeking the following reliefs:-

"i. To appoint a Sole Arbitrator, as mentioned in the petition to adjudicate the disputes and differences between the Petitioner and Respondent, or

ii. To appoint a Sole Arbitrator to adjudicate the claims of the Petitioner in accordance with the Arbitration and Conciliation Act, 1996 as amended;

iii. Any other or further order/direction, which this Hon'ble Court may deem fit and proper in the facts and circumstances of the present case."

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2. Petitioner is a company incorporated under the Companies Act, 2013 on 11.08.2017 having its office at-H/240, Ashok Vihar Phase 1, Delhi, whereas the Respondent is a limited company incorporated under Companies Act, 1956 having its office at Shakti Sadan, Kotla Marg, New Delhi.

3. It is submitted that the Respondent invited bids for 'Construction of Boundary wall at a 220KV grid sub-station at south of Wazirabad' through tender no. T14P130479. Petitioner submitted bid and work was awarded to the petitioner on 23.02.2016 and the said work was awarded to Petitioner vide Purchase Order No. 4500000224 dated 06.03.2017.

4. Pursuant to this, a contract agreement dated 11.04.2017 was signed between Petitioner and the Respondent pursuant to the Purchase Order and Tender for 'Construction of Boundary wall at 220 KV grid sub-station South of Wazirabad'. The time schedule for completing the work was for 365 days from the date of commencement i.e. from 24.04.2017 until 23.04.2018.

5. It is submitted that because of delays, defaults and breaches caused and committed by the Respondent in performing its contractual obligations, Respondent had approved the Extension of Time without levy of compensation/liquidated damages. Consequently, the work was prolonged and was completed on 16.01.2019, causing huge losses to the Petitioner. The Respondent despite assuring the Petitioner on multiple occasions did not compensate for losses suffered by the Petitioner due to extension of time for completion of work.

6. It is stated that vide letter dated 14.07.2021, Petitioner requested the Respondent to release the outstanding amount for the project. The petitioner had neither received any amount nor reply after issuance of the letter dated 14.07.2021. Thus, in view of the wrongful retaining/non-releasing the amounts due for payments by the Respondent mentioned in the letter dated 14.07.2021, the dispute has arisen between the parties.

7. It is submitted that, therefore, in terms of the provisions contained in Condition 11 of the Terms and Conditions annexed with purchase orders dated 06.03.2018 and 11.05.2018 and Clause 25 pertaining to Arbitration contained in General Conditions of Contract dated 11.04.2017 for resolving the matters in dispute, the Petitioner vide letter dated 03.08.2021 requested the Respondent for appointment of a sole arbitrator to resolve the dispute. It is stated that on receipt of the letter for appointment dated 03.08.2021, Respondent issued a reply dated 27.08.2021, denying all the claims mentioned in the letter, and did not appoint any arbitrator.

8. It is further stated that the Petitioner had issued a detailed letter dated 20.04.2022 pertaining to description of claim of the Petitioner and for appointment of sole Arbitrator to adjudicate the dispute between the parties. In this said letter, Petitioner had reiterated that office of Respondent cannot appoint any person as arbitrator unilaterally as per Arbitration and Conciliation Act, 1996 and as per the guidelines laid down by Hon'ble Supreme Court.

9. It is stated that vide the said letter dated 20.04.2022, Petitioner had

proposed five names of renowned persons who have vast experience in the field of Arbitration taken from the approved list of empanelled Arbitrators in PWD, GNCTD dated 27.12.2021. Accordingly, the Petitioner issued another notice 26.05.2022 for appointment of Sole Arbitrator.

10. It is thus submitted that despite the attempts of the Petitioner to resolve the dispute amicably but to no avail, and the Respondent till date has not even appointed a sole arbitrator. Therefore, in view of above facts and circumstances, the Petitioner is left with no remedy, but to file the present petition under Section 11(6) of the Arbitration and Conciliation Act, 1996 before this Court for the appointment of an arbitrator.

11. *Per contra*, learned counsel for the respondent vehemently opposed the submissions made by the parties and denied all the averments made in the petition. However, it is duly accepted that the disputes between the parties are arbitrable in nature and there is no objection if the instant dispute is referred by this Court to a Sole Arbitrator.

12. Heard learned counsels for the parties and perused the record.

13. 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. The disputes between the parties are arbitrable in nature, and the notice under Section 21 also stands served. In view of the request made by the parties, to resolve the disputes arising under the said agreement, this Court finds it appropriate to refer the said disputes and differences arising between the parties to arbitration, by appointing a Sole

Arbitrator. Hence, the following order:

ORDER

- (i) Justice Dinesh Kumar Singh, Former Judge, Patna High Court is appointed as a sole arbitrator to adjudicate the disputes between the parties which have arisen between the parties;
- (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 Delhi International Arbitration Centre (Administrative Cost and Arbitrators Fees) Rules, 2018 as amended vide notification dated 15th November, 2022;
- (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.

14. A copy of the order be forwarded to the learned Sole Arbitrator on the following address:

**Justice Dinesh Kumar Singh, Former Judge,
Patna High Court
Address- I/110, Lajpat Nagar-I, New Delhi**

Contact No.- +91 9431015011

Email ID- justicedineshksingh@gmail.com

15. Accordingly, the instant petition is disposed of alongwith pending applications, if any.

16. The order be uploaded on the website forthwith.

CHANDRA DHARI SINGH, J

APRIL 12, 2023

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Click here to check corrigendum, if any



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