

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

% **Date of order : 24th March, 2023**

+ **ARB.P. 1432/2022**

ADO INDIA PVT. LTD. Petitioner

Through: Ms. Ritu Singh Mann, (Through
VC) and Mr. Dheeraj K. Garg,
Advocates

versus

ATS HOUSING PRIVATE LIMITED Respondent

Through: Mr. Kunal Kher, Advocate

CORAM:

HON'BLE MR. JUSTICE CHANDRA DHARI SINGH

ORDER

CHANDRA DHARI SINGH, J (Oral)

I.A. 5759/2023 (Delay)

1. By way of this application under Section 151 of the Code of Civil Procedure, 1908, the respondent seeks condonation of delay in filing the reply.
2. For the reason stated in the application, the delay of 4 days in filing the reply is condoned.
3. The application is disposed of.

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1. The instant petition under Section 11(5) of the Arbitration and

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Conciliation Act, 1996 has been filed on behalf of petitioner seeking the following reliefs:-

“(i) Appoint any person as this Hon'ble Court may deem fit and proper, as the Sole Arbitrator to adjudicate and decide all disputes that have arisen between the Petitioner and Respondent in relation to the Work Order No. WOJPR/0006/16-17 dated 20.10.2016, read with Term and Conditions contained therein;

(ii) pass an order for costs of the Petition...”

2. The petitioner is a duly registered Company, being a part of the multinational ADO Group, which is involved in the business of manufacturing UPVC windows and doors systems and providing services for installation of its products as per the requirement of its customers. The respondent is a real estate company/builder engaged in business of construction, providing services related to development and construction of flats in housing projects, office spaces, shops, residential plots.

3. The learned counsel appearing on behalf of the petitioner submitted that the respondent approached the petitioner to supply UPVC doors and windows for its project “ATS PRISTINE, SC 01/A-1, Sector- 150, Noida”. Consequently, both the parties entered into the Agreement/Work Order dated 20th October, 2016. The terms for supply, including the payment terms, were negotiated and the respondent placed upon the petitioner Work Order No. WOJPR/0006/16-17 dated 20th October, 2016 for Rs. 1,77,59,129.96/-.

4. Learned counsel appearing on behalf of petitioner submitted that the petitioner supplied entire goods as per the terms of the Work Order,

completed the installation and handed over the project to the respondent. Thereafter, the petitioner claimed the balance amount for the work, as per the terms of the Work Order. Despite repeated requests and reminders, the respondent failed to respond to the petitioner. It is submitted that the respondent failed to make payment towards the balance amount and all the dues still remain uncleared.

5. The learned counsel submitted that subsequently, the petitioner approached the Ministry of Micro, Small & Medium Enterprises (hereinafter “MSME”) Council on 15th January, 2021 for redressal of the disputes arisen between the parties. It is submitted that after a span of time, the petitioner realized that it was not eligible to approach the MSME Council as the Work Order No. WOJPR/0006/16-17 was executed between the petitioner and the respondent on 20th October, 2016, that is, prior to the petitioner’s MSME registration. Accordingly, vide email and letter dated 1st December, 2022, the petitioner withdrew its claim filed before MSME Council while reserving its right to invoke the Arbitration Clause 1.18 of the Standard Terms & Conditions for ATS Housing Pvt. Ltd.

6. It is submitted that the petitioner, thereafter, served the Notice dated 22nd October 2022 upon the respondent for invocation of Arbitration Clause and initiation of arbitration proceedings. Since the respondent failed to take any actions in pursuance of the aforesaid Notice, the petitioner prays that an arbitrator be appointed to adjudicate upon the disputes between the parties.

7. The learned counsel appearing on behalf of the respondent

vehemently opposed the instant petition on merits and submitted that there is no amount due and payable by the respondent to the petitioner. It is submitted that the instant petition is liable to be dismissed on the ground that the petition is based on false, frivolous and unsubstantiated facts and claims.

8. It is submitted that the invocation of Arbitration Clause under Section 21 of the Arbitration Act is bad in law and premature, since the petitioner had not withdrawn its claim before the MSME before serving the Notice. It is stated that admittedly, the petitioner had filed an application before the MSME Council on 15th January 2021, which could not be settled before the same and was subsequently sent to the Delhi International Arbitration Centre (hereinafter “DIAC”) for adjudication and resolution. It is submitted that instead of withdrawing its claim and seeking liberty to agitate its claim before some other forum, the petitioner wrongly invoked Section 21 of the Arbitration Act vide notice dated 22th October 2022, thereby, initiating arbitration proceedings under the Arbitration Act.

9. However, the learned counsel for the respondent does not deny the fact that there are disputes between the parties that have stemmed from the Work Order and are arbitrable in nature.

10. The learned counsel for the petitioner, in rejoinder, submitted that there is nothing before the MSME Council or in the Arbitration Act which prevents or bars the petitioner to approach this Court seeking invocation of the Arbitration Clause. It is further submitted that after the conciliation proceedings before the MSME Council have come to an end

and an arbitrator has not been appointed for carrying out the process of arbitration, there is nothing that bars the petitioner for seeking the relief of appointment of adjudication of disputes between the parties.

11. It is also stated that at the time of invoking Section 21 of the Arbitration Act and serving the Notice upon the respondent, the MSME Council had not appointed an arbitrator, hence, the Section 21 Notice is in accordance with law. It is further submitted that the respondent has itself admitted that the conciliation before the MSME Council had failed and therefore, no claim was pending before the MSME Council as on 22nd October 2022.

12. Learned counsel submitted that the MSME Council was otherwise not competent to entertain the reference on account of the Work Order under which goods and services were supplied, as the same was prior in time to the petitioner's MSME registration, and hence, any appointment of an arbitrator by MSME Council would have been invalid.

13. Heard the learned counsel for the parties and perused the record.

14. The petitioner has approached this Court for appointment of an arbitrator to adjudicate the disputes between the parties. The respondent has objected to the contents of the petition on merits as well as the course taken by the petitioner while invoking arbitration proceedings between the parties. The respondent has also raised objection on the ground that conciliation proceedings are already pending before the MSME Council, therefore, the Notice as per Section 21 of the Arbitration Act is bad in law. However, there is no objection on behalf of the respondent to the averment that the disputes between the parties are arising out of the Work

Order executed amongst them and that such disputes are arbitrable in nature.

15. The Arbitration Act and the provisions therein encourage that the parties to a dispute may be referred to arbitration where there exists an arbitration clause/agreement, the parties are in consensus for invocation of such clause/agreement, the disputes between the parties are arbitral in nature and a prior notice is served upon the other party to the dispute.

16. In the instant petition as well, there is an arbitration clause in existence, that is, Clause 1.18 of the Standard Terms & Conditions for ATS Housing Pvt. Ltd. which has been invoked, there is consensus to the fact that disputes have arisen between the parties which are arbitrable in nature and the petitioner has also served a Notice under Section 21 of the Arbitration Act. The only objection taken on behalf of the respondent is regarding the procedure followed for invocation of the arbitration proceedings and regarding pendency of an arbitration/conciliation proceeding before another forum, which has been vehemently objected to and denied by the petitioner.

17. It has been satisfactorily shown by the petitioner that the Notice in accordance with Section 21 of the Arbitration Act had been served upon the respondent before an arbitrator was even appointed by the MSME Council. Moreover, it has been stated that on 1st December 2022, the petitioner withdrew the proceedings before the MSME Council and hence, no proceeding remains pending before any other forum which is similar to the nature of the proceedings sought to be initiated by way of filing the instant petition. Therefore, considering the spirit of the

Arbitration Act, this Court is inclined to refer the parties to arbitration for resolution of their disputes.

18. Accordingly, keeping in view the above circumstances as well as the inclination of the parties to be referred to arbitration for adjudication for the disputes arisen between them, this Court finds it appropriate to refer the parties to a sole arbitrator. Hence the following order:-

ORDER

- (i) Mr. Vineet Dhanda, Advocate is appointed as a sole arbitrator to adjudicate the disputes between the parties which have arisen from the Work Order No. WOJPR/0006/16-17 dated 20th October, 2016;
- (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 (DIAC) (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.

19. A copy of the order be forwarded to the learned sole arbitrator on the following address:

Mr. Vineet Dhanda, Advocate

Address- House No. 60, First Floor,

Poorvi Marg, Vasant Vihar, Delhi- 110057

Contact No.- +91 9811013810

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

21. The order be uploaded on the website forthwith.

CHANDRA DHARI SINGH, J

MARCH 24, 2023

dy/ms

Click here to check corrigendum, if any



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