



2024-DHC-2755



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

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Date of decision: 02nd April, 2024

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ARB.P. 139/2024**PARNIKA COMMERCIAL ESTATES PVT LTD** Petitioner

Through: Mr. Bhupesh Narula & Ms. Rinku Narula, Advocates.

versus

ARSHAD SHAH

..... Respondent

Through: Mr. Vipul Ganda, Ms. Avnika Mishra & Ms. Sakshi Rastogi, Advocates.

CORAM:**HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA****J U D G M E N T (oral)**

1. The present Petition under Section 11(6) of the Arbitration and Conciliation Act, 1996 (*hereinafter referred to as the "Act, 1996"*) has been filed on behalf of the petitioner seeking appointment of a sole Arbitrator.
2. It is submitted that the petitioner is a Private Limited Company which secured the Contract for Work for Construction of New Office Building, Vanijya Bhavan (formerly known as DGS&D at 16-A, Akbar Road, New Delhi on Design, Engineering, Procurement and Construction (EPC) basis (Pkg-1) *vide* Letter of Award Ref. No. NBCC/CGM(CPG)/2018/962 dated 02.05.2018.
3. Under the Contract Agreement/LoA, all the works were guaranteed for 18 months from the date of issuance of Completion Certificate and was

Signature Not Verified

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to be reckoned as Maintenance Guarantee period.

4. The petitioner issued the Work Order to the respondent, a Proprietorship of Mr. Arshad Shah for an amount of Rs. 9,58,00,000/-, including all taxes as GST, Entry Tax, Octroi, EPF and ESIC.

5. It is submitted that the respondent failed to fulfil his contractual obligations; resultantly, the Project got extended into additional time and other issues arose because of breach of Contract committed by the respondent which imposed an additional burden on the petitioner, like increased overhead costs, loss of profit, idling of machinery and other damages.

6. The petitioner has asserted that as per the Agreement, the time was the essence of the Contract and the Project in question was a prestigious Central Government Project, which not only got delayed but also the respondent failed to cleave milestones and schedule of Work given to him. Despite numerous written communications and verbal discussions, the respondent failed to discharge his obligation and stick to his promises.

7. The disputes arose under the Work Order granted to the respondent. Consequently, the petitioner issued a Demand Notice dated 19.10.2022 to the respondent for refund of excess payment made of Rs. 1,43,95,438/- for the various mentioned sites which included the present project, but the respondent instead of giving any reply to the Demand Notice dated 19.10.2022, as a counter-blast, sent a Counter Notice of Demand dated 21.10.2022 to the petitioner on irrelevant grounds.

8. Furthermore, the respondent initiated the Insolvency proceedings before the National Company Law Tribunal, New Delhi *vide* IB Application No. (IB)-126(ND)/2023. During those proceedings, it had been proved that



the said Application was false and frivolous and based on manufactured story created by the respondent as self-imagination. The NCLT Bench-III, New Delhi *vide* Order dated 18.12.2023 dismissed the said Application.

9. The petitioner has submitted that according to the statement, the balance amount of Rs. 3,40,02,973.48/- along with interest @18% is due and payable to the petitioner.

10. As per Clause 2.6 of the Work Order, the disputes between the parties were agreed to be resolved through arbitration proceedings. The petitioner *vide* its Notice of Invocation of Arbitration dated 20.12.2023 invoked the arbitration clause, but the respondent has failed to reply. Hence, the petitioner has filed the present petition for appointment of a sole Arbitrator.

11. Learned counsel on behalf of the respondent has submitted that though a Reply has been filed by him, but the same is under objection.

12. It has been pointed out by him that the case of the petitioner rests on Notice of Demand dated 19.10.2022, wherein it clearly indicates the dues for the various Projects, but the Vanjiya Bhavan Project does not find a mention.

13. The Notice of Demand dated 19.10.2022, therefore, does not correspond to the facts of the present case and the present petition is not tenable.

14. It is also submitted that there is a huge discrepancy in the petition and the documents of the petitioner for which reason, the petition is liable to be dismissed.

15. **Submissions heard.**

16. Learned counsel for the respondent has rightly pointed out that in the Notice of Demand dated 19.10.2022, while the amounts due from various



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Projects are indicated, but there is no mention of the present Project. However, in the Notice of Invocation, it has been clearly indicated that under this Project, the amount of Rs. 3,40,02,973.48/- is claimed to be due from the respondent. In the Notice of Invocation, the disputes have been clearly indicated.

17. Moreover, there is admittedly a valid Arbitration Clause 2.6 in the Work Order issued by the petitioner in favour of the respondent.

18. In view of the submissions made and that the petitioner has raised the arbitrable disputes and there is a valid Arbitration Clause between the parties, the present petition is allowed, Mr. Justice Ajit Singh, Chief Justice (Retd.), Gauhati High Court, Mobile No. 8457921666, is hereby appointed as the Sole Arbitrator to adjudicate the disputes between the parties.

19. The parties are at liberty to raise their respective objections before the Arbitrator.

20. The fees of the learned Arbitrator would be fixed in accordance with the Schedule-IV of the Act, 1996 or as consented by the parties.

21. This is subject to the Arbitrator making necessary disclosure as under Section 12(1) of the Act, 1996 and not being ineligible under Section 12(5) of the Act, 1996.

22. Learned counsels for the parties are directed to contact the learned Arbitrator within one week of being communicated a copy of this Order to them by the Registry of this Court.

23. Accordingly, the present petition is disposed of in the above terms.

(NEENA BANSAL KRISHNA)
JUDGE

APRIL 02, 2024/S.Sharma