



2024:DHC:5469



\$~5

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

+ ARB.P. 209/2024

M/S NARENDER KUMARPetitioner
Through: Ms. Kanika Singh, Mr. Nikhil
Saini, Ms. Angel Bhardwaj, Mr. Anant Garg,
Mr. Saman Yadav, Mr. Archit Bhardwaj,
Mohd. Kaleem Khan, Advocates.

Versus

**UNION OF INDIA THROUGH CENTRAL
PUBLIC WORK DEPARTMENT**Respondent
Through: Mr. J.K. Tripathi with Mr. Amit
Acharya, Advocates.

**CORAM:
HON'BLE MR. JUSTICE C. HARI SHANKAR**

JUDGMENT (ORAL)

% 23.07.2024

ARB.P. 209/2024

1. This is a petition under Section 11(6) of the Arbitration and Conciliation Act, 1996 ("the 1996 Act") for reference of the disputes between the parties to arbitration.

2. The dispute arises in the context of a contract awarded to the petitioner by the respondent for annual repair and maintenance of the training institute of the Cabinet Secretariat situated in Gurgaon.



2024:DHC:5469



3. The parties are governed by the General Conditions of Contract (GCC) applicable to Government contracts. Clause 25 of the GCC envisages settlement of disputes by arbitration and reads thus:

“Clause 25

Except where otherwise provided in the contract, all questions and disputes relating to the meaning of the specifications, design, drawings and instructions here-in before mentioned and as to the quality of workmanship or materials used on the work or as to any other question, claim, right, matter or thing whatsoever in any way arising out or relating to the contract, designs, drawings, specifications, estimates, instructions, orders or these conditions or otherwise concerning the works or the execution or failure to execute the same whether arising during the progress of the work or after the cancellation, termination completion or abandonment thereof shall be dealt with as mentioned hereinafter:

(i) If the contractor considers any work demanded of him to be outside the requirements of the contract, or disputes any drawings, record or decision given in writing by the Engineer-in-Charge or if the Engineer in Charge considers any act or decision of the contractor on any matter in connection with or arising out of the contract or carrying out of the work, to be unacceptable and is disputed, such party shall promptly within 15 days of the arising of the disputes request the Chief Engineer/ CPM or where there is no Chief Engineer/CPM, the Additional Director General/Special Director General (CE/ADG/SDG) who shall refer the disputes to Dispute Redressal Committee (DRC) within 15 days along with a list of disputes with amounts claimed if any in respect of each such dispute. The Dispute Redressal Committee (DAC) give its decision within a period of 60 days extendable by 30 days by consent of both the parties from the receipt of reference from CE/CPM/ADG/SDG. The constitution of Dispute Redressal Committee (DRC) shall be as indicated in Schedule "F", Provided that no party shall be represented before the Dispute Redressal Committee by an advocate/legal counsel etc.

The DRC will submit its decision to the concerned ADG/SDG for acceptance. ADG/SDG in a time limit of 30 days from receipt of DRC decision will convey acceptance or otherwise on the said decision if the Dispute Redressal



2024:DHC:5469



Committee (DRC) fails to give its decision within the aforesaid period or the ADG/SDG fails to give his acceptance in the aforesaid time limit or any party is dissatisfied with the decision of Dispute Redressal Committee (DRC) ADG/SDG the neither party may within a period of 30 days from the receipt of the decision of Dispute Redressal Committee (DRC), ADG/SDG or on expiry of aforesaid the time limits available to DRC/ADG/SDG may give notice to the Chief Engineer/CPM, CPWD, in charge of the work or if there being Chief Engineer/CPM, the Additional Director General/Special Director General the concerned region of CPWD or if there be no Additional Director General/Special Director General, the Director General, CPWD for appointment of arbitrator on prescribed proforma as per Appendix XVII under intimation to the other party.

It is a term of contract that each party invoking arbitration must exhaust the aforesaid mechanism of settlement of claims/disputes prior to invoking arbitration.

The CE/CPM/ADG/SDG shall in such case appoint the sole arbitrator or one of the three arbitrators as the case may be within 30 days of receipt of such a request and refer such disputes to arbitration. Wherever the Arbitral Tribunal consists of three Arbitrators, the contractor shall appoint one arbitrator within 30 days of making request for arbitration or of receipt of request by Engineer-in-charge to CE/ADG SDG/DG for appointment of arbitrator, as the case may be, and two appointed arbitrators shall appoint the third arbitrator who shall act as the Presiding Arbitrator. In the event of

- (a) A party fails to appoint the second Arbitrator, or
 - (b) The two appointed Arbitrators fail to appoint the Presiding Arbitrator, then the Director General, CPWD shall appoint the second or Presiding Arbitrator as the case may be.
- (ii) Disputes or difference shall be referred for adjudication through arbitration by a Tribunal having sole arbitrator where claimed amount is Rs. 20 Crore or less. Where claimed Value is more than Rs. 20 Crore, Tribunal shall consist of three Arbitrators as above. The



2024:DHC:5469



requirements of the Arbitration and Conciliation Act, 1996 (26 of 1996) and any further statutory modification or re-enactment thereof and the rules made there under and for the time being in force shall be applicable.

It is a term of this contract that the party invoking arbitration shall give a list of disputes with amounts claimed, if any, in respect of each such dispute along with the notice for appointment of arbitrator and giving reference to the decision of the ADG/SDG on the finding/recommendation of DRC.

It is also a term of this contract that member(s) of the Arbitration Tribunal shall be a Graduate Engineer with experience in handling public works engineering contracts, and further he shall have earlier worked at a level not lower than Chief Engineer/equivalent (i.e. Joint Secretary level of Government of India). This shall be treated as a mandatory qualification to be appointed as arbitrator.

Parties, before or at the time of appointment of Arbitral Tribunal may agree in writing for fast track arbitration as per the Arbitration and Conciliation Act, 1996 (26 of 1996) as amended in 2015.

Subject to provision in the Arbitration and Conciliation Act, 1996 (26 of 1996) as amended in 2015 whereby the counter claims if any can be directly filed before the arbitrator without any requirement of reference by the appointing authority. The arbitrator shall adjudicate on only such disputes as are referred to him by the appointing authority and give separate award against each dispute and claim referred to him and in all cases where the total amount of the claims by any party exceeds Rs. 1,00,000/-, the arbitrator shall give reasons for the award.

It is also a term of the contract that fees payable to arbitral tribunal shall be as approved by DG, CPWD, OM issued vide no.2/2006/SE(TLC)/CSQ/137 dated 19-11-2019 (or its latest amendment as approved by DG, CPWD). This fee shall be shared equally by parties.

The place of arbitration shall be as mentioned in Schedule F. In case there is no mention of place of arbitration, the



2024:DHC:5469



arbitral tribunal shall determine the place of arbitration.

The venue of the arbitration shall be such place as may be fixed by the Arbitral Tribunal in consultation with both the parties. Failing any such agreement, then the Arbitral Tribunal shall decide the venue.”

4. A reading of Clause 25(i) reveals that the petitioner was required, in the first instance, to represent to the Chief Engineer or the Additional Director General, who in turn was required to refer the disputes to the Disputes Redressal Committee (DRC). The exercise that follows, as envisaged by the said rule is only if the dispute is so referred to DRC. If the dispute is not referred to DRC, the parties are entitled to invoke arbitration.

5. In the present case, the petitioner addressed a letter to the Chief Engineer/ADG on 23 November 2023 invoking Clause 25 of the GCC. Apparently, the dispute was never referred to the DRC, as the petitioner received no response to the said communication. The petitioner, thereafter, addressed a second communication to the respondent on 22 December 2023, seeking reference of the dispute to arbitration. This communication also having met with no response, the petitioner has approached this Court.

6. The only contention of the respondent, apart from arguing that the claim was not maintainable on merits, is that the communications addressed by the petitioner to the respondent were not received by the respondent. This contention is not acceptable as the petitioner has placed on record a stamped copy of the notice invoking arbitration as



2024:DHC:5469



Document 6 with the petition.

7. In that view of the matter, the petitioner is entitled to succeed in his request for referring the dispute to arbitration.
8. The dispute between the parties accordingly stands referred to the Delhi International Arbitration Centre (DIAC). The DIAC would appoint a suitable arbitrator to arbitrate on the dispute.
9. The arbitration would take place under the aegis of the DIAC and would abide by its rules and regulations. The learned arbitrator shall be entitled to fees as per the schedule of fees maintained by the DIAC.
10. The learned arbitrator is also requested to file the requisite disclosure under Section 12(2) of the 1996 Act within a week of entering on reference.
11. The petition stands disposed of in the aforesaid terms.

C.HARI SHANKAR, J

JULY 23, 2024

rb

[Click here to check corrigendum, if any](#)