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

+ **ARB.P. 289/2024**

MS KRISHAN KUMAR AND SONS

.....Petitioner

Through: Mr Avinash Trivedi and Mr Rahul
Aggarwal, Advs.

versus

**DELHI TOURISM AND TRANSPORTATION
DEVELOPMENT CORPORATION LTD**

.....Respondent

Through: None

CORAM:

HON'BLE MR. JUSTICE JASMEET SINGH

ORDER

21.08.2024

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1. This is a petition filed under Section 11(6) of the Arbitration and Conciliation Act, 1996 seeking appointment of an Arbitrator for adjudication of disputes between the parties.
2. The petitioner was awarded the work of "Repair, renovation, upgradation & furnishing work and creation of Toilet Block & Guard Room at old NCC building, Directorate of Education old Secretariate Delhi (SH: Civil & Electrical works)" vide Letter of Acceptance bearing No. DTTDC/Engg./I(59)/EE(SP)/NCC/225 on 21.05.2018.
3. The petitioner performed its obligations and raised its final bill on 19.08.2021.
4. The Arbitration clause is Clause 25 of the General Conditions of Contract (GCC) which reads as under:-

"CLAUSE 25

Except where otherwise provided in the Contract all questions and



disputes relating to the meaning of the specifications, design, drawings and instructions herein 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 of 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 and drawings, record or decision given in writing by the Engineer-in-charge on any matter in connections with or arising out of the Contract or carrying out of the work, to be unacceptable, he shall promptly within 15 days request the Superintending Engineer in writing for written instructions or decision. Thereupon, the Superintending Engineer shall give his written instruction or decision within a period of one month from the receipt of the Contractor's letter.

If the Superintending Engineer fails to give his instructions or decision in writing within the aforesaid period or if the Contractor is dissatisfied with the instructions or decision of the superintending engineer, the Contractor may, within 15 days of the receipt of the Superintending Engineer's decision, appeal to the Chief Engineer who shall afford an opportunity to the Contractor to be heard, if the latter so desires, and to offer evidence in support of his appeal. The Chief Engineer shall give his decision within 30 days of receipt of contractor's appeal. If the Contractor is dissatisfied with this decision of the Chief Engineer, the contractor may within 30 days from the receipt of the Chief Engineer decision, appeal before the Dispute Redressal Committee (DRC) along with a list of disputes with amounts claimed in respect of each such dispute and giving reference to the rejection of his disputes by the Chief Engineer. The Dispute Redressal Committee (DRC) shall give his decision within a period of 90 days from the receipt of Contractor's appeal. The constitution of Dispute Redressal Committee (DRC) shall be as



indicated in Schedule 'T'. If the Dispute Redressal Committee (DRC) fails to give his decision within the aforesaid period or any party is dissatisfied with the decision of Dispute Redressal Committee (DRC), then either party may within a period of 30 days from the receipt of the decision of Dispute Redressal Committee (DRC), give notice to the Chief Engineer for appointment of arbitrator on prescribed proforma as per appendix XV, failing which the said decision shall be final binding and conclusive and not referable to adjudication by the arbitrator. It is the term of contract that each party invoking arbitration must exhaust the aforesaid mechanism of settlement of claims/disputes prior to invoking arbitration.

(ii) Except where the decision has become final, binding and conclusive in terms of Sub Para (i) above, disputes or difference shall be referred for adjudication through arbitration by a sole arbitrator appointed by the Chief Engineer, I&FC. If the arbitrator so appointed is unable or unwilling to act or resigns his appointment vacates his office due to any reason whatsoever, another sole arbitrator shall be appoint in the manner aforesaid. Such person shall be entitled to proceed with the reference from the stage at which it was left by his predecessor.

It is a term of this Contract that the party invoking arbitration shall give a list of disputes with amount claimed in respect of each such dispute along with the notice for appointment of arbitrator and giving reference to the rejection by the chief engineer of the appeal.

It is also a term of this Contract that no person other than a person appointed by such Chief Engineer, I&FC as aforesaid should act as arbitrator and if for any reason that is not possible, the matter shall not be referred to arbitration at all.

It is also a term of this Contract that if the Contractor does not make any demand for appointment of arbitrator in respect of any claims in writing as aforesaid within 120 days of receiving the intimation from the Engineer-in-Charge that the final bill is ready for payment, the claim of the Contractor shall be deemed to have been waived and absolutely barred and the Employer shall be discharged and released of all liabilities under the Contract in respect of these claims.



The arbitration shall be conducted in accordance with the provisions of the Arbitration and Conciliation Act, 1996 (26 of 1996) or any statutory modifications or reenactment thereof and the rules made there under and for the time being in force shall apply to the arbitration proceeding under this clause, except for cases falling under para 2(i) or (ii).

It is also a term of this Contract that 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 if any fees are payable to the arbitrator, these shall be paid equally by both the parties.

It is also a term of the Contract that the arbitrator shall be deemed to have entered on the reference on the date he issues notice to both the parties calling them to submit their statement of claims and counter statement of claims. The venue of the arbitration shall be such place as may be fixed by the arbitrator in his sole discretion. The fees, if any, of the arbitrator shall, if required to be paid before the award is made and published, be paid half and half by each of the parties. The cost of the reference and of the award (including the fees, if any, of the arbitrator) shall be in the discretion of the arbitrator who may direct to any by whom and in what manner, such costs or any part thereof shall be paid and fix or settle the amount of costs to be so paid.”

5. Since there were disputes between the parties, the petitioner wrote a letter dated 07.02.2023 to the Chief Project Manager and the Managing Director of the respondent department seeking release of the due payments or else refer the matter to senior officials for appointment of arbitrator.
6. On 07.01.2023, the petitioner again wrote a letter to the Managing Director to constitute Dispute Resolution Committee (DRC) for settlement of disputes.
7. As the petitioner did not receive any response, the petitioner invoking



the arbitration clause wrote a letter dated 11.10.2023 to the Chief Project Manager of the respondent department seeking resolution of dispute by way of arbitration.

8. This Court *vide* Order dated 28.02.2024 issued notice to the respondent. As per the registry, the respondent has been served.

9. Despite service there is nobody appearing for the respondent.

10. I have already taken a view in ARB.P. 287/2024 in identical circumstances, in disputes between similar parties.

11. For the same reasons as in ARB.P. 287/2024, the petition is allowed. Since the parties are still having disputes between them, the following directions are issued:-

- i) Mr. Sumeet Pushkarna, Adv. (Mobile No. 9811042847) is appointed as a Sole Arbitrator to adjudicate the disputes between the parties.
- ii) The arbitration will be held under the aegis of the Delhi International Arbitration Centre, Delhi High Court, Sher Shah Road, New Delhi (hereinafter, referred to as the 'DIAC'). The remuneration of the learned Arbitrator shall be in terms of the Fourth Schedule of the Arbitration & Conciliation Act, 1996.
- iii) The learned Arbitrator is requested to furnish a declaration in terms of Section 12 of the Act prior to entering into the reference.
- iv) It is made clear that all the rights and contentions of the parties, including as to the arbitrability of any of the claim, any other preliminary objection, as well as claims/counter-claims and merits of the dispute of either of the parties, are left open for



adjudication by the learned arbitrator.

- v) The parties shall approach the learned Arbitrator within two weeks from today.
12. The petition is allowed and disposed of in the aforesaid terms.

JASMEET SINGH, J

At 04:30 PM

At this stage Mr. Rajendra Singh Rana, learned Counsel for the respondent has appeared and is apprised of the order.

JASMEET SINGH, J

AUGUST 21, 2024/sr/dm

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