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

+ **ARB.P. 313/2023**

M/S MSV INTERNATIONAL INC. Petitioner

Through: **Mr. Rohit Goel, Ms. Ria Gupta and
Mr. Kapil Shishodia, Advocates.**

versus

MUNICIPAL CORPORATION OF DELHI Respondent

Through: **Ms. Puja Kalra, Standing Counsel
with Mr. Virendra Singh, Advocate
for respondent.**

CORAM:

HON'BLE MR. JUSTICE ANUP JAIRAM BHAMBHANI

ORDER

12.03.2024

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By way of the present petition filed under section 11(6) of the Arbitration & Conciliation Act 1996 ('A&C Act'), the petitioner seeks appointment of a Sole Arbitrator to adjudicate upon the disputes that are stated to have arisen with the respondent from Contract Agreements, two of which are dated 22.03.2013 and the third is dated 18.12.2017 ('Contract Agreements').

2. Though no formal notice has been issued on the petition, the respondent has filed its reply dated 01.11.2023, opposing the prayer made; whereupon the petitioner has filed its rejoinder dated 29.01.2024. Parties have also filed their respective written submissions in the matter.
3. Briefly, disputes between the parties have arisen from the 03 Contract Agreements, whereby the petitioner was appointed to provide consulting services to monitor the work of a PPP Project for



collecting, segregation, transportation and delivery of Mmunicipal Solid Waste in 06 zones of the respondent/Municipal Corporation.

4. The petitioner had raised certain invoices upon the respondent for the services rendered, and the petitioner claims that 03 of those invoices for the period July 2017 to September 2017, January 2018 to May 2018, and October 2020 to May 2021, are due and payable by the respondent.
5. In the reply filed, the respondent has raised two principal objections :
 - 5.1. *Firstly*, the respondent contends that the petitioner cannot be permitted to club the alleged claims arising from 03 separate contracts into one petition seeking reference to arbitration; and
 - 5.2. *Secondly*, the respondent contends that the *petition* seeking reference to arbitration is time-barred.
6. Ms. Puja Kalra, learned standing counsel appearing for the respondent argues, that in particular, each of the 03 Contracts Agreements in question were valid for a 03-year period and the contracts accordingly ran-out in 2016 and 2020; and that therefore, the petitioner's invocation of arbitration, and the filing of the present petition, are beyond the time permitted in law.
7. Upon a *prima-facie* view of the matter, it transpires that the last invoices raised by the petitioner pertain to the services rendered for the period between October 2020 and May 2021, and it is *inter-alia* in respect of those invoices that the petitioner has issued to the respondent an invocation notice dated 16.09.2022, invoking arbitration and making its claims.



8. The present petition under section 11(6) of the A&C Act was filed on 10.02.2023.
9. Though some of the earlier claims arising from invoices raised for the period July 2017 to September 2017, and January 2018 to May 2018, may require closer consideration, it would appear that the limitation even for filing those claims would fall within the period of 15.03.2020 and 28.02.2022, namely the period which the Supreme Court has directed would be excluded for purposes of calculating limitation *vide* order dated 10.01.2022 made in ***In re: Cognizance for Extension of Limitation***¹.
10. In the opinion of this court therefore, for the reasons discussed above, the question of whether one or more of the claims sought to be raised are time-barred would, at the very least, be a mixed question of fact and law, which would have to be decided by the Sole Arbitrator to be appointed in the matter.
11. In the circumstances, this court is not persuaded to hold that the claims sought to be raised by way of the present petition are *ex-facie* time-barred or that they are 'deadwood'.
12. Insofar as the objection as to clubbing of the claims is concerned, though it is noticed that para 8 of invocation notice dated 16.09.2022 refers only to contract agreement dated 22.03.2013, in the said notice the petitioner does set-out its claims arising from all three contracts, specifying the amounts due under each of them.

¹ (2022) 3 SCC 117



13. Insofar as the arbitration agreement is concerned, that is embedded in clause 2.2.16 of the request for proposals dated October 2011 and April 2017; and contemplates reference of disputes between the parties to arbitration by a Sole Arbitrator; with the place of arbitration being at New Delhi *only*.
14. Besides, the disputing parties are based in Delhi; and the consulting services that were subject matter of the contract, were also rendered by the petitioner to the respondent in Delhi.
15. Insofar as the objection raised on behalf of the respondent that invocation notice dated 16.09.2022 carries no reference to contract dated 18.12.2017, suffice it to say, that there is a reference to that contract by way of the claims set-out by the petitioner in the invocation notice.
16. In the circumstances, this court is persuaded to allow the petition.
17. Accordingly, the present petition is allowed and **Ms. Garima Sehgal, Advocate (Cellphone No.: +91 9953201386)** is appointed as the learned Sole Arbitrator to adjudicate upon the disputes between the parties; with arbitration proceedings to be conducted under the aegis of the DIAC, in accordance with applicable rules.
18. The learned Sole Arbitrator would furnish to the parties requisite disclosures as required under section 12 of the A&C Act; and in the event there is any impediment to the appointment on that count, the parties are given liberty to file an appropriate application in this court.
19. The learned Arbitrator shall then proceed with the arbitral proceedings in accordance with the rules and regulations of DIAC and subject to arbitrator's fee and arbitration costs, as may be applicable.



20. The claims arising from the 03 distinct contracts dated 18.12.2017, 22.03.2013 and 22.03.2013, shall be treated as 03 separate references, though to be decided by the same Sole Arbitrator.
21. All rights and contentions of the parties in relation to the claims/counter-claims, including the objection raised as to the claims being time-barred, are kept open, to be decided by the learned Sole Arbitrator on merits, in accordance with law.
22. A copy of this order be communicated *forthwith* to the Co-ordinator, DIAC, for information and compliance.
23. A copy of this order be communicated by the Registry to the learned Sole Arbitrator, as also to learned counsel for the parties, *via* e-mail.
24. The petition stands disposed-of in the above terms.
25. Pending applications, if any, also stand disposed-of.

ANUP JAIRAM BHAMBHANI, J

MARCH 12, 2024

V.Rawat