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

% ***Date of decision: 25th April, 2024***

+ **ARB.P. 295/2024**

MS KRISHAN KUMAR AND SONS Petitioner

Through: Mr. Avinash Trivedi, Advocate

versus

DELHI TOURISM AND TRANSPORTATION DEVELOPMENT
CORPORATION LTD Respondent

Through: Ms. Ankita Sarangi, Advocate

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 Sole Arbitrator to adjudicate the disputes having arisen *inter se* the parties in respect of Acceptance Letter bearing No. DTTDC/Engg./I(196)/EE(PB-III)/011 dated 04.08.2016 and Agreement bearing No. 01/EE(PB-III)/DTTDC/Engg./2016-17.

2. It is submitted that the petitioner is a registered Partnership Firm engaged in the business of civil construction and infrastructure works in various Government Departments including the respondent and private sectors. The petitioner had submitted its application for tender published for



the execution of the work of “*Creation/ Construction of one additional floor over existing administrative block of SCERT at Defence Colony, New Delhi (SH: Civil and Electrical Work)*” which was accepted by the respondent vide letterbearing No. DTTDC/Engg./I(196)/EE(PB-III)/011 dated 04.08.2016. Accordingly, the parties entered into an Agreementbearing No. 01/EE(PB-III)/DTTDC/Engg/2016-17 for execution for work on total contractual amount of Rs. 2,82,33,815/-.

3. It is further submitted that the petitioner had prepared all the requisite requirements to execute the work in terms of the Agreement immediately after the issuance of the acceptance letter. However, the work was not completed within the stipulated time due to the hindrances attributable to the respondent Department and on account of certain extra work which the respondent Department got done from the petitioner. Finally, the work was completed on 23.04.2018 and a Completion Certificate was also issued by the respondent department in this regard.

4. Further, the Final Bill was submitted by the petitioner along with the measurements which was certified on 28.01.2019 and also partly paid on 28.01.2019. The amount of Rs. 22,33,494/- was withheld but was released on 10.05.2019. However, it is asserted that before the Bill was certified by the respondent, they had coerced the petitioner into giving an undated undertaking on their letterhead before release of the Final Bill amount.

5. Thus, the petitioner addressed a Letter dated 07.02.2023 to the Chief Project Manager and the Managing Director of the respondent Department vide which it invoked the jurisdiction in terms of Clause 25 of the GCC of the Agreement, requesting release of the due amount or in the alternative, reference of the dispute to the senior officials for appointment of Arbitrator.



6. The petitioner again requested the respondent Department to constitute a Dispute Resolution Committee in terms of Clause 25 of the GCC for resolution of disputes, vide letter dated 01.07.2023.

7. Despite repeated requests of the petitioner, the respondent failed to respond and the petitioner again wrote a letter dated 11.10.2023 intimating the respondent of its earlier letters to which no response was received. The petitioner then served the final Notice seeking resolution of disputes by arbitration. The letter was marked to the Chief Project Manager of the respondent however, the respondent failed to release the arrears of amount or appoint an arbitrator within the Notice period of 30 days.

8. In this factual background, the petitioner has filed the present Petition under Section 11 of the Act seeking appointment of a Sole Arbitrator to adjudicate disputes arising between the parties.

9. **The respondent in his Reply** took essentially three objections namely, *firstly*, the claims are *barred by limitation*; *secondly*, the procedure for Resolution of Disputes as contemplated under Clause 25 of the GCC has not been followed before filing the present Petition; and *thirdly*, an undertaking had already been given by the petitioner stating that there are no disputes surviving between the parties. Therefore, the disputes sought to be raised by way of the present petition, are not arbitrable.

10. **Submissions heard.**

11. The first ground taken is that the claims are *barred by limitation*. The Limitation Act prescribes a period of three years from the date when the disputes arise. Herein, the Clause 25 of the GCC does not prescribe the period within which the parties can approach the Court/ Arbitrator for seeking redressal of their disputes. Therefore, the limitation being the mixed



question of law, cannot be the ground to disallow the present petition. Furthermore, the parties are at liberty to raise the question of limitation before the learned Arbitrator.

12. The *second objection* taken by the respondent is that the procedure for Settlement as prescribed under Clause 25 of GCC, has not been followed. According to Clause 25 of the GCC, in case the contractor is asked to do any work outside the requirements of the Contract or there are any disputes in regard to the decision given in writing by Engineer in Chief or any other matter, he shall promptly within 15 days request the Superintendent Engineer in writing for written instructions or decision. The Superintendent Engineer shall give his written instructions within one month of receiving of such letter.

13. It is further contemplated under Clause 25 GCC that if the Superintendent Engineer fails to give his instructions or decisions within the contemplated time or the contractor is not satisfied with the instructions so given, he may appeal to the Chief Engineer within 15 days who shall afford an opportunity of being heard to the contractor and would give the decision within 30 days of receipt of the Appeal. In case the contractor is still dissatisfied, he may appeal before the Dispute Redressal Committee which would in turn give its decision within 90 days. If still not satisfied, the contractor would give a Notice within 30 days of the decision of the RCC to the Chief Engineer for appointment of the Arbitrator for invoking the Arbitration.

14. In the present case, the Contractor/Petitioner herein had given a letter dated 07.02.2023 to CPM with a copy to the Executive Engineer to resolve the disputes. On the same date, the letter dated 07.02.2023 had also been



addressed to the Managing Director. This was followed by another letter dated 01.07.2023 to the Managing Director wherein it was stated that the concerned CPM and EE have failed to give any response and therefore, the Notice was served upon the Managing Director under Clause 25(1) GCC for constitution of DRC.

15. Having received no response from the Managing Director in regard to the constitution of DRC, the petitioner again wrote the letter dated 11.12.2023 to the CPM informing that despite more than 90 days having elapsed, the DRC has still not been constituted and hence, the request was made under Clause 25(2) of the GCC for appointment of the Arbitrator.

16. From the various letters of the petitioner addressed to the CPM Executive Engineer, it is evident that the petitioner had complied with the settlement procedure as envisaged as Clause 25 of the GCC but because of no response from the respondents, it was compelled to give the Notice dated 11.10.2023 for invocation of the Arbitration.

17. Essentially, the purpose of providing a detailed multi layered mechanism within the Department for addressing the grievances of the Contractor is essentially to be proactive and to settle the disputes and prevent unnecessary litigation. However, it is the respondent who has been inactive to settle the claim the petitioner and such inaction has resulted in protracted litigation which can never be appreciated; more so when one of the party is the branch of the Government. This objection is without any merit.

18. The *third ground* agitated on behalf of the respondent is that a Final undertaking had been furnished by the petitioner stating that there were no disputes surviving. In view of the amounts that have been released under the



Final Bill and the admission of the petitioner that no dispute survives, the Claims under the contract, cannot be now re-agitated.

19. In M/s Thermal Engineers & Insulators Pvt. Ltd. Vs. Delhi Tourism & Transportation Development Corporation Ltd. in Arb. Pet. No. 1033/2021 decided on 25th February, 2022, the Coordinate Bench while considering a similar objection in a Petition under Section 11(6) of the A&C Act, 1996, observed that even though an Undertaking of final payment had been received, the circumstances under which such undertaking was executed and whether the same could be considered as a complete discharge of the contractual obligation of the respondent absolving him from all the liabilities, is still a moot point open for adjudication.

20. Similar view has been expressed recently by the Coordinate Bench in the case of Makker Construction V/s Delhi Tourism & Transportation Ltd. in Arb. Pet.1263/2023 decided on 14.03.2024 wherein it was observed that merely because an Undertaking has been furnished by the petitioner, the disputes would not become non Arbitrable. The circumstances in which such Undertaking was given and the effect thereof, would require adjudication.

21. Therefore, the objections taken on behalf of the respondent are not tenable as they are mixed questions of fact and law which can be determined only by recording evidence. The respondents are at liberty to agitate these grounds of challenge in their defense before the learned Arbitrator.

22. In the circumstances, Ms. Ruchi Narula, Advocate, Delhi High Court, Mobile-9810084123, is hereby appointed as the Arbitrator.

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

24. This is subject to the Arbitrator making necessary disclosure as under



Section 12(1) of A&C Act, 1996 and not being ineligible under Section 12(5) of the A&C Act, 1996.

25. The fees of the learned Arbitrator would be fixed in accordance with the Fourth Schedule to A&C Act, 1996 or as consented by the parties.

26. 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.

27. A copy of this Order be also forwarded to the learned Arbitrator, for information.

28. The petition is accordingly disposed of in the above terms.

(NEENA BANSAL KRISHNA)
JUDGE

APRIL 25, 2024/PT