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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Date of decision: 22nd May, 2024

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ARB.P. 360/2024

M/S SPACE 4 BUSINESS SOLUTION PVT LTD

THROUGH ITS AUTHORISED SIGNATORY

SH. ARUNESH BANSAL,

3588, MAIN BAZAR, OLD SABZI MANDI

DELHI-110007

ADV.DURGESHGUPTA@GMAIL.COM

..... Petitioner

Through: Mr. Durgesh Gupta, Advocate.

versus

1. THE DIVISIONAL COMMISSIONER

Principal Secretary,

Revenue Department, GNCTD,

5, Sham Nath Marg

Delhi-110054,

Standing counsel gnctd@gmail.com

2. G.N.C.T.D.

Through Its Secretary

Revenue Department,

5, Sham Nath Marg,

Delhi-110054,

standingcounselgnctd@gmail.com

..... Respondents

Through: Mr. Tushar Sannu, Mr. Sahaj Karan Singh and Mr. Shobhan Sachdeva, 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 petitioners seeking appointment of an independent Arbitrator.
2. **Briefly stated**, the petitioner herein was awarded a Tender by the respondent on 12.01.2012 and the work was duly executed by the plaintiff. However, the work done was for Rs.2,31,30,326/-, out of which only a sum of Rs.1,80,91,192/- was released, leaving a balance of Rs.50,39,134/-.
3. When the matter could not be resolved, the petitioner gave a Legal Notice dated 30.04.2014 which was followed by a Notice of Invocation of Arbitration dated 10.10.2014.
4. The petitioner filed an Arbitration Petition No.242/2015 under Section 11(6) of Arbitration & Conciliation Act before this Court which was allowed vide Order 11.08.2015 directing that the matter be referred to Secretary, Revenue for giving opportunity to the parties to resolve their disputes within six weeks, failing which, the Secretary, Revenue shall appoint an Arbitrator for adjudication of the matter.
5. Since the Secretary Revenue failed to appoint the Arbitrator, the petitioner filed another *Arbitration Petition No.156/2016* which was allowed vide Order dated 31.05.2016 and the Delhi International Arbitration Centre (DIAC) was directed to appoint the Arbitrator in the matter.
6. A Sole Arbitrator was appointed, who delivered the Award dated



24.10.2017. It is submitted that though there was a proposal for a settlement inter-se the parties on payment of Rs.52,23,401/-, but the same was only a proposal which did not get fructified into a settlement, despite which the learned Sole Arbitrator passed the Award in the said sum as proposed inter-se the parties.

7. The petitioner challenged the Award vide Arbitration Petition No.15/2018 before the learned District & Sessions Judge under Section 34 of the Act, 1996 which was allowed vide Order dated 02.11.2018 and the Award was set aside.

8. Thereafter, the petitioner moved an application before DIAC in December, 2019 for appointment of an Arbitrator to decide the dispute afresh. The application remained pending in the office of DIAC and orally the petitioner was advised in January, 2024 to file the petition under Section 11(6) of the Act, 1996. Consequently, the present petition has been filed for appointment of Arbitrator.

9. **The petition is opposed on behalf of the respondent**, who has submitted that the entire amount of Rs. 52,23,401/- as was due to the petitioner already stands paid. The present petition does not disclose any cause of action. Furthermore, it is filed beyond a period of three years and is barred by limitation.

10. **Submissions heard.**

11. Pertinently, the Award has been set aside on 02.11.2018 and the petitioner could have sought the appointment of the Arbitrator within three years as per Section 43 of the Act, 1996 which reads as under:

43. Limitations.—(1) The Limitation Act, 1963 (36 of 1963), shall apply to arbitrations as it applies to



proceedings in court.

(4) Where the Court orders that an arbitral award be set aside, the period between the commencement of the arbitration and the date of the order of the Court shall be excluded in computing the time prescribed by the Limitation Act, 1963 (36 of 1963), for the commencement of the proceedings (including arbitration) with respect to the dispute so submitted.

12. The present petition has been filed on 04.03.2024 while the impugned Award is dated 02.11.2018. Even if the period specified in the Section 43 of the Act, 1996 and the period between 15.03.2020 and 28.02.2020 (excluded by the Supreme Court in *Suo Moto Writ Petition (C) 3/2020*), the present petition is clearly beyond the period of limitation of three years.

13. Pertinently, condition No.29 of the Tender dated 28.12.2011 stipulated that:

“Any controversy or dispute arising out of this contract shall be referred to Secretary Revenue, Revenue Department and if the same is not resolved then the matter shall be referred to the Arbitrator appointed by the Revenue Department.”

14. As per the submissions of the petitioner himself, the Secretary Revenue should appoint the Arbitrator under the Agreement. In case of the failure to appoint an arbitrator under the mutually agreed process, can the petitioner institute a petition under Section 11(6) of the Act. Therefore, on failure to appoint an arbitrator under the Agreement, the petitioner cannot resort to a process of appointment as per his wishes. Once the Award got set aside on 02.11.2018, the only option available to the petitioner was to approach the Court under Section 11(6) of the Act, 1996.

15. Moreover, once the procedure of Section 11(6) had previously been



adopted, the same procedure should have been followed for appointment of a fresh Arbitrator. The petitioner could not have approached DIAC for direct appointment of the Arbitrator without any Order under Section 11(6) of the Act. For this reason, it is held that the negligence or ignorance of the petitioner of approaching wrong Forum would not absolve him of the consequences.

16. Further, the petitioner herein cannot be given the benefit of Section 14 of the Limitation Act, 1963 for the simple reason that his application for appointment of Arbitrator filed before DIAC cannot be deemed to be an alternate Forum. There is no power under DIAC to appoint Arbitrator under Section 11(6) as such power vests solely with the Court. Merely by putting an application to the DIAC for appointment of the Arbitrator, the petitioner cannot be held to have pursued his remedy before an alternate Forum. In fact, the filing of the application before DIAC was completely misplaced as DIAC is not the alternate Forum for appointment. Therefore, the period from 2019 till 2024 cannot be excluded in calculating the period of limitation.

17. It is also pertinent to mention here that the entire claim of the petition in the first Arbitration was of Rs. 50,39,134/- along with interest @ 18% per annum which came to Rs.86,67,310/-. The parties negotiated for a settlement in the sum of Rs. 52,23,401/-, but it could not be finalized.

18. Learned Arbitrator has awarded a sum of Rs. 52,23,401/- which is little more than the principle amount, essentially on the basis of admission of the respondent of its outstanding liability. Whether to grant or refuse the interest on the principle amount, is the absolute discretion of the learned Arbitrator.

19. This is a peculiar case where the petitioner having received the entire



amount, is now again intending to re-agitate the same claim by asserting that there was no settlement *inter se* the parties. There may not be any settlement, but the fact remains that this was the claimed amount which was duly awarded to the petitioner and also paid to him.

20. So far as the interest component is concerned, it is the discretion of the Arbitrator and the same cannot be claimed by the petitioner as a matter of right. On a specific query being put to him, the petitioner has agreed that the entire amount has already been received, but he is only aggrieved on account of non-payment of interest. This also may not be correct as a sum of about Rs.2 lakhs has been paid over and above the claimed principle amount.

21. Be as it may, the present petition under Section 11 of the Act is patently barred by limitation and is hereby dismissed.

(NEENA BANSAL KRISHNA)
JUDGE

MAY 22, 2024
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