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IN THE HIGH COURT OF DELHI AT NEW DELHI

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ARB.P. 365/2024

A K BUILDERS

.....Petitioner

Through: Mr. BK Prabhat, Mr. Bhola Dayal,
Mr. Ashok Kr. Verma, Advs.

versus

DELHI TOURISM AND TRANSPORTATION DEVELOPMENT
CORPORATION LTD

.....Respondent

Through: Mr. Siddhant Nath, SC with Mr.
Bhavishya Makhija, Adv.

CORAM:

HON'BLE MR. JUSTICE JASMEET SINGH

ORDER

05.11.2024

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1. This is a petition filed under Section 11 of the Arbitration and Conciliation Act, 1996 seeking appointment of the Sole Arbitrator for adjudication of disputes between the parties.
2. In the present case, the respondent awarded the contract on 24.02.2018 for upgradation of Coffee Home, Connaught Place, New Delhi. After completion of the work, the respondent issued completion certificate. Thereafter, the petitioner submitted its final bill to the respondent. On 11.07.2022, the respondent in its letter acknowledged the balance amount and stated that the after sanction is received, the same will be released to the petitioner.
3. The arbitration clause is clause 25 of General Conditions of Contract



which reads as under:-

“25. Settlement of Disputes & Arbitration:

“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 any drawings, record or decision given in writing by the Engineer-In-Charge on any matter in connection 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 instruction or decision. Thereupon, the Superintending Engineer shall give his written instructions 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 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 the decision of the Chief Engineer, the contractor



may within 30 days from 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 'F'. 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, falling which the said decision shall be final binding and conclusive and not referable to adjudication by the arbitrator.

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.

- (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, CPWD, in charge of the work or if there be no Chief Engineer, the Additional Director General of the concerned region of CPWD or if there be no Additional Director General, the Special Director General or the Director General, CPWD. If the arbitrator so appointed is unable or unwilling to act or resigns his appointment or vacates his office due to any reason whatsoever, another sole arbitrator shall be appointed 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 amounts 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 CPWD or Additional Director General or Special Director General or Director General, CPWD, 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 Government 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 re-enactment thereof and the rules made thereunder and for the time being in force shall apply to the arbitration proceeding under this clause.

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."

4. As the dues of the petitioner were not cleared, the petitioner invoked the arbitration clause in the manner as contemplated and thereafter filed the present petition.
5. Mr. Nath, learned Standing Counsel states that the reply to the present petitioner has been filed, however, the same is not on record. The copy of the reply has been handed over in Court today which is taken on record.
6. He opposes the present petition on the ground that the claims of the petitioner are barred by limitation and the mechanism as contemplated under the arbitration clause has not been followed.
7. He states that in terms of clause 25(1), the petitioner was required to first approach the Superintending Engineer, thereafter the Executive Engineer, thereafter the Dispute Redressal Committee and lastly to the Court by filing the present petition. Since none of them has been



followed, the present petition is pre-mature.

8. As regards the issue of limitation is concerned, the Hon'ble Supreme Court in *Arif Azim Co. Ltd. v. Aptech Ltd.*, (2024) 5 SCC 313 has observed as under:-

“84. Thus, in ordinary circumstances, the limitation period available to the petitioner for raising a claim would have come to an end after an expiry of three years, that is, on 27-3-2021. However, in March 2020, the entire world was taken under the grip of the deadly Covid-19 Pandemic bringing everyday life and commercial activity to a complete halt across the globe. Taking cognizance of this unfortunate turn of events, this Court vide order dated 23-3-2020 passed in Cognizance for Extension of Limitation, In re [Cognizance for Extension of Limitation, In re, (2020) 19 SCC 10 : (2021) 3 SCC (Cri) 801] directed the period commencing from 15-3-2020 to be excluded for the purposes of computation of limitation. The said extension of limitation was extended from time to time by this Court in view of the continuing pandemic. As a result, the period from 15-3-2020 to 28-2-2022 was finally determined to be excluded for the computation of limitation. It was provided that the balance period of limitation as available on 15-3-2020 would become available from 1-3-2022.”

9. In the present case, the final bill was submitted in the month of August, 2019 and as per the arbitration clause, the petitioner approached the Executive Engineer of the respondent on 08.09.2022. The judgment of



Hon'ble Supreme Court in *Cognizance for Extension of Limitation, In re, (2020) 19 SCC 10* has observed that the period from 15.03.2020 to 28.02.2022 shall be excluded for the purposes of computation of limitation. The petitioner consumed the period of approx. 7 months out of 3 years and the balance period i.e. 2 years 5 months, if added from 01.03.2022, the limitation period would expire on or before July, 2024.

10. As noted above, the arbitration mechanism was invoked on 08.09.2022. Hence, the petitioner invoked the arbitration mechanism within 3 years of the disputes having been arisen between the parties.
11. As regards the arbitration mechanism is concerned, firstly the petitioner issued legal notice to the Executive Engineer on 08.09.2022 as there was no Superintending Engineer which was the first step as envisaged under arbitration clause. It is not disputed in the reply of the respondent that there was no Superintending Engineer at that time.
12. Since the disputes were not addressed, the petitioner then approached the Managing Director on 11.05.2023 as there was no Chief Engineer. It is also not disputed that there was no Chief Engineer at that time. The petitioner issued another notice requesting the respondent to constitute the Dispute Redressal Committee or appoint an Arbitrator. The same was also not replied by the respondent. The petitioner having exhausted all the mechanism as envisaged under the arbitration clause, the present petition has been rightly filed by the petitioner.
13. For the said reasons, I am satisfied that, the petition is within limitation and also the petitioner had followed the mechanism as envisaged under Clause 25 quoted above.
14. For the said reasons, the petition is allowed and the following



directions are issued:-

- i) Mr. Vidit Gupta, Advocate (Mob. No. 9910995511) 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').
 - iii) The remuneration of the learned Arbitrator shall be in terms of DIAC (Administrative Cost and Arbitrators' Fees) Rules, 2018.
 - iv) The learned Arbitrator is requested to furnish a declaration in terms of Section 12 of the Act prior to entering into the reference.
 - v) 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.
 - vi) The parties shall approach the learned Arbitrator within two weeks from today.
15. With these directions, the petition is disposed of.

JASMEET SINGH, J

NOVEMBER 5, 2024 / (MS)

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