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

+ **ARB.P. 443/2024**

**ASHOK KUMAR SINGHAL SOLE PROPRIETOR OF M C
CONSTRUCTION CO.**

.....Petitioner

Through: **Mr. Saurav Singh Yadav, Adv.**

versus

GOVT. OF NCT OF DELHI

.....Respondent

Through: **Mr. Tushar Sannu, Mr. Sahay Karan
Singh, Advs. with Mr. Bichittar
Singh, EE PWD, West and Mr. Radhe
Shyam, AE, PWD, West.**

CORAM:

HON'BLE MR. JUSTICE JASMEET SINGH

ORDER

07.08.2024

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I.A. 7570/2024-EX.

1. Exemption is granted subject to all just exceptions.
2. The petitioner shall file legible and clearer copies of exempted documents, compliant with practice rules before the next date of hearing.
3. The application is disposed of.

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4. This is a petition filed under Section 11 of the Arbitration and Conciliation Act, 1996 seeking appointment of the Sole Arbitrator to adjudicate the disputes between the parties.
5. The parties entered into an Agreement dated 10.05.2023 in which the petitioner was awarded work of strengthening/reconstruction of service road



of Rohtak Road (NH-10) from Metro Pillar No. 410-570 Mundka Industrial Area.

6. The arbitration clause is Clause 25 of the Agreement which reads as under:-

“[..]

25.2 Arbitration: *If the aforesaid conciliation proceedings fail or the Conciliator fails to give proposal for settlement within the aforesaid period, either party may promptly give notice in the proforma prescribed in Appendix XVIII, under intimation to the other party, to the Chief Engineer or the Superintending Engineer concerned with the work (as applicable), hereinafter referred to as the Arbitrator Appointing Authority as indicated in Schedule F, for appointment of Arbitrator. However, a party may seek appointment of Arbitrator without taking recourse to the process of conciliation mentioned in sub-clause 25.1 above.*

In the event of either party giving a notice to the Arbitrator Appointing Authority for appointment of Arbitrator, the said Authority shall appoint Arbitrator as per the procedure given below and refer such disputes to arbitration.

(a) Number of Arbitrators: *If the contract amount is less than Rs. 100 crore, the disputes may be referred for adjudication by a sole Arbitrator. If the contract amount is Rs. 100 crore or more, the disputes may be referred to an Arbitral Tribunal of three Arbitrators.*

or more, the disputes may be referred to an Arbitral Tribunal of three Arbitrators.

(b) Qualification of Arbitrators: *It is a term of this contract that each member of the Arbitral Tribunal shall be Graduate Engineer with experience in execution of public works engineering contracts, and he should have worked earlier at a level not lower than the Chief Engineer (equivalent to level of Joint Secretary to the Government of*



India). The aforesaid educational qualification and work experience shall be mandatory for appointment as Arbitrator:

The age of Arbitrator at the time of appointment shall not exceed 75 years. An Arbitrator may be appointed notwithstanding the total number of active arbitration cases with him.

(c) Parties to select Arbitrator: Based on the criteria specified above, a list of empanelled Arbitrators has been prepared in CP WD, and the parties shall have option to select an Arbitrator from the list sent to them.

[. . .]

25.3 Appointment of Sole Arbitrator: The parties may opt for appointment of the Arbitrator of the Ministry of Housing and Urban Affairs. In such cases, the party seeking arbitration has to submit an express agreement in writing as per Appendix XIX towards waiver of Section 12(5) of the Arbitration and Conciliation Act, 1996 along with the notice for appointment of Arbitrator in the proforma prescribed in Appendix XVIII, under intimation to the other party. The Arbitrator Appointing Authority shall, within 30 days of receipt of the said notice, appoint Arbitrator of the Ministry of Housing and Urban Affairs as Arbitrator in the matter, provided the other party also submits waiver of Section 12(5), *ibid* in Appendix XIX within 7 days of the receipt of the said notice.

Where any one of the parties does not opt for the Arbitrator of the Ministry of Housing and Urban Affairs, or does not submit the waiver agreement, **the Arbitrator Appointing Authority shall propose five Arbitrators (rom the list of CPWD Empanel/ed Arbitrators** to the party seeking arbitration under intimation to the other party within 15 days of receiving the notice. **The party seeking arbitration shall give his choice for one of them within 15 days of receiving the list, and the Arbitrator Appointing**



Authority shall appoint the chosen person as the Sole Arbitrator within 15 days of the receipt of choice.

It is a term of this arbitration agreement that if the parties (ail to select, within the period prescribed above, an Arbitrator of their choice from the list of CPWD Empanelled Arbitrators forwarded to them, the Arbitrator Appointing Authority shall himself select and appoint Arbitrator from the said list.

[..]"

7. The petitioner followed the arbitration process by referring its dispute to the Executive Engineer and thereafter to the Appointing Authority.

8. The petitioner invoked arbitration clause *vide* Legal Notice dated 15.03.2024.

9. Mr. Sannu, learned counsel for the respondent has filed a reply and states that in view of the judgment of ***SBI General Insurance Compnay Ltd. vs Krish Spinning, 2024:INSC:532*** and the "Eye of the Needle" test, the arbitration clause is admitted.

10. However, he states that the Sole Arbitrator be appointed in terms of Clause 25.2(b) quoted above.

11. For the said reasons, the petition is allowed with the following directions:-

- i) Delhi International Arbitration Centre, Delhi High Court, Sher Shah Road, New Delhi (hereinafter, referred to as the 'DIAC') shall appoint the Sole Arbitrator keeping in view the qualification of the Arbitrator in terms of Clause 25.2(b) of the Agreement dated 10.05.2023
- ii) The arbitration will be held under the aegis of 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. With these directions, the present petition is disposed of.

JASMEET SINGH, J

AUGUST 7, 2024/NG