



2024:DHC:5447



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**+ **ARB.P. 482/2024**

M/S PNSC INFRASTRUCTURE PVT LTDPetitioner
Through: Mr. Kunwar Chandresh, Ms.
Poonam Prasad, Ms. Anshuka Nigam and
Mr. Munis Nazir, Advs.

versus

JAMIA MILLIA ISLAMIARespondent
Through: Mr. Prithish Sabharwal, SC for
JMI

CORAM:
HON'BLE MR. JUSTICE C. HARI SHANKAR

ORDER (ORAL)**22.07.2024**

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1. Mr. Prithish Sabharwal, learned Standing Counsel for the respondent, submits that he has filed a reply to this petition, which is not forthcoming on record.

2. Nonetheless, Mr. Sabharwal has been heard. He submits that his main opposition to this petition is on the ground of limitation as well as on the ground that the entire amount due to the petitioner already stands paid.

3. In view of the recent judgment of the Supreme Court in ***SBI General Insurance Company Ltd v. Krish Spinning¹*** these pleas have necessarily to be taken before the learned Arbitral Tribunal.



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4. The relevant portion of the arbitration clause which governs the parties reads thus:

“Clause 25

Except where otherwise provided in the contract, all questions and disputes relating 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 anyway 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 referred to the sole arbitration of the person appointed by the V.C., Jamia Millia Islamia in office, at the time of dispute or there be no V.C. the administrative head of the Jamia Millia Islamia, at the time of such appointment that the arbitrator so appointed.

It will be no objection to any such appointment that the arbitrator so appointed is a University servant, that he had to deal with the matters to which the contract relates and that in the course of his duties as University servant he had expressed views on all or any of the matters in dispute of difference. The arbitrator to whom the matter is originally referred being transferred or vacating his office or being unable to act for any reason, such head as aforesaid at the time of such transfer, vacation of office or inability to act, shall appoint another person to act as arbitrator in accordance with the terms of the contract. 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 the contract that the party invoking arbitration shall specify the dispute or disputes to be referred to arbitration under this clause together with the amount or amounts claimed in respect of each such dispute on prescribed proforma as per Appendix XV.

It is also a term of this contract that no person, other than a person appointed by Vice-Chancellor or Administrative Vice-Chancellor as aforesaid, should act as arbitrator and if for any reason that it is not possible, the matters shall not be referred to arbitration at all.

It is also a term of the 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 Jamia Millia Islamia that the final bill is ready for payment the claim of the contractor will be deemed to have been

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waived and absolutely barred and the Jamia Millia Islamia 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 arbitrator and Conciliation Act, 1996 (26 of 1996) or any statutory modifications or enactment thereof and the rules made there under 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 part exceeds Rs.1,00,000/- the arbitrator shall give reasons for the award.

It is also a terms 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 terms 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 and paid half by each of the parities. 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.

The arbitrator(s) may from time to time with consent of the parties enlarge the time, for making and publishing the award.

The decision of the University Superintending Engineer regarding quantities of reduction as well as justification there of in respect of rates for sub standard work which may be decided will be final and would not be open to arbitration.”

5. In view of the judgment of the Supreme Court in *Perkins Eastman Architects DPC v. HSCC (India) Ltd*² and *Bharat*



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Broadband Network Ltd v. United Telecoms Ltd³, the arbitration can obviously not be assigned to the Vice Chancellor of the respondent.

6. Both sides are, therefore, agreeable to appointment of an independent person as an arbitrator, as fixed by the Court.

7. However, Mr. Sabharwal submits that all contentions including the contentions of limitation and accord and satisfaction may be left open to be taken before the learned arbitrator.

8. Accordingly, this Court appoints Ms. Madhurima Mridul, Advocate (Tel: 9810175151) as arbitrator to arbitrate on the dispute between the parties.

9. The arbitrator shall be entitled to charge fees in accordance with the Fourth Schedule of the 1996 Act. The learned Arbitrator is also requested to file the requisite disclosure under Section 12(2) of the 1996 Act within a week of entering on the reference.

10. The respondent shall also be entitled to file any counter claim, if it so chooses, with the learned Arbitral Tribunal.

11. This petition stands disposed of in the aforesaid terms.

C.HARI SHANKAR, J

JULY 22, 2024

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