



2024: JUDGE: 4125



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
% ***Date of decision: 15th May, 2024***

+ **ARB.P. 488/2024**

M/S NITYA NAND AND SONS CONTRACTORS PVT. LTD.

..... Petitioner

Through: Ms. Amrita Panda & Mr. Sri Aditya
Kumar, Advocate.

versus

UNION OF INDIA

..... Respondent

Through: Mr. Ravi Kant Srivastava, Sr. Panel
Counsel for UoI.

CORAM:
HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

JUDGMENT (oral)

I.A. 8327/2024 (Exemption)

1. Allowed, subject to all just exceptions.
2. The application is disposed of.

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3. The present Petition under Section 11 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 an independent and impartial sole Arbitrator for adjudication of the disputes having arisen between the parties.

4. It is submitted in the petition that the petitioner and the respondent entered into the Contract bearing No. C.A.No. CE(AF)/ALD/BMR/08 of 2015-2016 for Provision of RCC Perimeter Security Wall at Phaphamau.



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5. The work of the Contract commenced on 15.07.2015 and the same was to be completed in 21 months.
6. It is submitted that the issues had begun to arise at the site from January, 2016. Therefore, the petitioner *vide* Letter dated 06.01.2016 informed the respondent about its inability to proceed with work and requested it to resolve the issues so that the work agreed under the Contract, may be done without any hindrance or obstruction. However, in spite of taking assistance of the Civil Police Authorities by the respondent to resolve the said issue with the locals, they for several months.
7. It is submitted that due to unresolved issues, the petitioner, for the first time in May, 2016, *vide* its Letter dated 31.10.2016 requested the work in the disturbed area to be suspended till the issues are resolved by the respondent as per Condition 9 of the I.A.F.W. (General Conditions of Contract). However, the respondent could not resolve the said issue by October, 2016 and no formal order of suspension was issued by the respondent. The same shall be treated as deemed suspension as five months elapsed from the request being made.
8. The petitioner, having received no reply till late November, wrote to the respondent, exercising its right under Condition 9, treating the work as abandoned/omitted by the Government.
9. It is also submitted that due to inaction on the part of the respondent, the petitioner's workers and staff were severely compromised, forcing 40% of its labourers to vacate the site out of fear of life and limb. However, by June, 2017, the petitioner had executed 90% of progress at site and the remaining 10% work is left to be completed.
10. Thereafter, the petitioner raised its Final Bill to the respondent,



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though the same was checked by its Office in November, 2019, but no payment has been made till date and nor the contractual claims have been admitted by the respondent.

11. In view of the disputes having arisen between the parties, the petitioner in terms of Condition 70 of I.A.F.W. 2249 (General Conditions of Contract) issued the Notices dated 05.05.2020, 22.05.2020 and 21.02.2023 invoking Arbitration to the respondent, however, the respondent has failed to reply to the said Notices.

12. It is submitted that the final bill has been settled by the respondent, but the petitioner has faced several losses, such as the loss of profits for 10-15% of pending work which could not be done due to failure of the respondent to provide the conducive working condition which resulted in foreclosure of the Contract.

13. It is also submitted that prolongation costs for period beyond 14.04.2017 i.e., the actual completion date as per the terms of the Contract, escalation costs and the GST, have not been paid by the Department.

14. Therefore, the petitioner has filed the present petition seeking appointment of Arbitrator.

15. Learned counsel for the respondent has not filed any formal Reply.

16. **Submissions heard.**

17. In view of the submissions made as well as Condition 70 of I.A.F.W. 2249 (General Conditions of Contract) which provides for arbitration and the petitioner has raised the arbitrable disputes and without prejudice to the rights and contentions of the parties, the present petition is allowed. Ms. Justice Mukta Gupta, (Retd.), Mobile No. 9650788600, is hereby appointed as the sole Arbitrator to adjudicate the disputes between the parties.



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18. The parties are at liberty to raise their respective objections before the Arbitrator.
19. The fees of the learned Arbitrator would be fixed in accordance with the Fourth Schedule of the Act, 1996 or as consented by the parties.
20. This is subject to the Arbitrator making necessary disclosure as under Section 12(1) of the Act, 1996 and not being ineligible under Section 12(5) of the Act, 1996.
21. The Arbitration shall be conducted under the aegis of Delhi International Arbitration Centre within the High Court precinct.
22. The parties are directed to contact the Arbitrator within one week of being communicated a copy of this Order to them by the Registry of this Court.
23. Accordingly, the present petition is disposed of in the above terms.

(NEENA BANSAL KRISHNA)
JUDGE

MAY 15, 2024/RS