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

+ **ARB.P. 586/2023**

KRISHNA

..... Petitioner

Through: Mr. Vikas Sharma, Ms. Manvi
Rajvanshy, Advs.

versus

MANAV SEWARTH TRUST

..... Respondent

Through:

CORAM:

HON'BLE MR. JUSTICE JASMEET SINGH

ORDER

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30.01.2024

I.A. 10766/2023-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 an Arbitrator to adjudicate disputes between the parties.
5. The arbitration Clause is contained in Clause 50 of the Agreement dated 07.11.2020 which reads as under:-

“CLAUSE 50 SETTLEMENT OF DISPUTES

All disputes or differences of any kind whatsoever that may arise between the Owner/Project Manager/Site Engineer and the Contractor in connection with or arising out of the Contract or subject matter thereof or the execution of Works, whether during the progress of Works or after their completion, whether before



or after determination of Contract shall be settled as under:-

50.1 Mutual Settlement

All such disputes or differences shall in the first place be referred by the Contractor to the Owner in writing for resolving the same through mutual discussions, negotiations, deliberation etc. Associating representatives from both the sides and concerted efforts shall be made for reaching amicable settlement of disputes or differences.”

50.2 Conciliation/Arbitration

50.2.1 It is a term of this Contract that Conciliation/Arbitration of disputes shall not be commenced unless an attempt has first been made by the parties to settle such disputes through mutual settlement.

50.2.2 If the Contractor is not satisfied with the settlement by the Owner/Project Manager on any matter in question, disputes or differences, the Contractor may refer to the Management of the Owner in writing to settle such disputes or differences through Conciliation or Arbitration provided that the demand for Conciliation or Arbitration shall specify the matters, which are in question or subject of the disputes.

50.2.3 Management of the Owner may himself act as Sole Conciliator/Sole Arbitrator or may at his option appoint another person as Sole Conciliator or Sole Arbitrator, as the case may be. In case, Management of the Owner decides to appoint a Sole Conciliator/Sole Arbitrator, then a panel of atleast three names will be sent to the Contractor. Such persons may be Working/retired employees of the Owner who had not been connected with the Work. The Contractor shall suggest minimum two names out of this panel for appointment of Sole Conciliator/Sole Arbitrator. Management of the Owner will appoint Sole Conciliator/Sole Arbitrator out of the names agreed by the



Contractor.

50.2.4 In case, the Contractor opts for settlement of disputes through Conciliation at first stage and if the efforts to resolve all or any of the disputes thorough Conciliation fails, the Contractor may refer to the Management of the Owner for settlement of such disputes or differences through Arbitration. The appointment of Sole Arbitrator shall be done by the Management of the Owner as per the procedure described above. No disputes or differences shall be referred to Arbitration after expiry of 60 days from the date of notification of failure of Conciliation.

50.2.5 The Conciliation and/or Arbitration proceedings shall be governed by the provisions of the Indian Arbitration and Conciliation Act 1996 or any statutory modification or re-enactment thereof and the rules made there under and for the time being in force shall apply to the conciliation and arbitration proceedings under this clause.

50.2.6 The language of proceedings, documents or communications shall be in English and the award shall be made in English in writing.

50.2.7 The conciliation/arbitration proceedings shall be held at New Delhi.

50.2.8 The fees and other charges of the Conciliator/Arbitrator shall be as per the scales fixed by the Owner from time to time and shall be shared equally between the Owner and the Contractor.

50.2.9 The minimum qualifications of Conciliator/ Arbitrator shall be graduate in Engineering. He may be Working or retired officer with a minimum of 20 years service in Group-A of any Engineering Service of Central Govt, or an equivalent service in a Central PSU. He should be clear from the vigilance angle and should be a person with reputation of high technical ability and



integrity. Also, he should not have associated with the Contract to which the dispute pertains.

50.3 Settlement through Court

It is a term of this Contract that the Contractor shall not approach any Court of Law for settlement of such disputes or differences unless an attempt has first been made by the parties to settle such disputes or differences through clauses 50.1 and 50.2.

50.4 No suspension of Work

The Obligations of the Owner, Project Manager and the Contractor shall not be altered by reasons of conciliation/arbitration being conducted during the progress of Works. Neither party shall be entitled to suspend the Work on account of conciliation/arbitration and payments to the Contractor shall continue to be made in terms of the Contract.

50.5 Award to be binding on all parties

The award of the Sole Arbitrator, unless challenged in court of law, shall be binding on all parties.

50.6 JURISDICTION OF COURTS:

Jurisdiction of courts for dispute resolution shall exclusively be New Delhi.”

6. It is stated by Mr. Sharma, learned counsel for the petitioner that pursuant to the agreement, the petitioner issued a legal notice dated 01.08.2022 to settle the disputes through mutual settlement.
7. Since there was no reply from the respondent, the petitioner invoked the Arbitration Clause vide legal notice dated 20.08.2022. The same was also not responded to by the respondent.



8. Hence, the present petition.
9. The notice was issued in the petition on 11.08.2023 and despite service, there is no appearance on behalf of the respondent till date.
10. For the said reasons, the petition is allowed and the following directions are issued:-
 - i) Mr. Pramod Saigal, Adv. (Mob. No. 9810027366) 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'). 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 on 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.



JANUARY 30, 2024 / (MS)

JASMEET SINGH, J

Click here to check corrigendum, if any