



2024:DHC:5113



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

+ **ARB.P. 557/2024**

AJAY DEEP CONSTRUCTION PVT. LTD.Petitioner

**Through: Mr. Achyuth Ajith Kumar and
Mr. Shyam Gopal, Advocates.**

versus

UNION OF INDIA & ANR.Respondent

**Through: Mr. Nishant Gautam, CGSC
with Mr. Hardik Bedi, GP, Mr. Vardhman
Kaushik, Ms. Sanjana Mehrotra, Mr.
Mayank Sharma and Mr. Vinay Kaushik,
Advocates for R1.**

Ms. Shriya Gambhir, Adv. for R2

CORAM:

HON'BLE MR. JUSTICE C. HARI SHANKAR

ORDER (ORAL)

09.07.2024

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1. This is a petition filed under Section 11(6) of the Arbitration and Conciliation Act, 1996¹, whereby the petitioner has requested the Court to appoint an arbitrator to arbitrate on the disputes between the parties.

2. The disputes arise out of an EPC² Contract dated 11 April 2018 executed between the petitioner and Respondent 1. Article 26 of the contract envisages resolution of disputes thus :

¹ "the 1996 Act" hereinafter

² Engineering, Procurement and Construction



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“26.1 Dispute Resolution

26.1.1 Any dispute, difference or controversy of whatever nature howsoever arising under or out of or in relation to this Agreement (including its interpretation) between the Parties, and so notified in writing by either Party to the other Party (the "Dispute") shall, in the first instance, be attempted to be resolved amicably in accordance with the conciliation procedure set forth in Clause 26.2.

26.1.2 The Parties agree to use their best efforts for resolving all Disputes arising under or in respect of this Agreement promptly, equitably and in good faith, and further agree to provide each other with reasonable access during normal business hours to all non-privileged records, information and data pertaining to any Dispute.

26.2 Conciliation

In the event of any Dispute between the Parties, either Party may call upon the Authority's Engineer, or such other person as the Parties may mutually agree upon (the "Conciliator") to mediate and assist the Parties in arriving at an amicable settlement thereof. Failing mediation by the Conciliator or without the intervention of the Conciliator, either Party may require such Dispute to be referred to the Chairman of the Authority and the Chairman of the Board of Directors of the Contractor for amicable settlement, and upon such reference, the said persons shall meet no later than 7 (seven) business days from the date of reference to discuss and attempt to amicably resolve the Dispute. If such meeting does not take place within the 7 (seven) business day period or the Dispute is not amicably settled within 15 (fifteen) days of the meeting or the Dispute is not resolved as evidenced by the signing of written terms of settlement within 30 (thirty) days of the notice in writing referred to in Clause 26.1.1 or such longer period as may be mutually agreed by the Parties, either Party may refer the Dispute to arbitration in accordance with the provisions of Clause 26.3.

26.3 Arbitration

26.3.1 Any dispute which is not resolved amicably by conciliation, as provided in Clause 26.2, shall be finally settled by arbitration in accordance with the rules of arbitration of the Society for Affordable Redressal of Disputes (SAROD)



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26.3.2 Deleted.

26.3.3 The arbitrators shall make a reasoned award (the "Award"). Any Award made in any arbitration held pursuant to this Article 26 shall be final and binding on the Parties as from the date it is made, and the Contractor and the Authority agree and undertake to carry out such Award without delay.

26.3.4 The Contractor and the Authority agree that an Award may be enforced against the Contractor and/or the Authority, as the case may be, and their respective assets wherever situated.

26.3.5 This Agreement and the rights and obligations of the Parties shall remain in full force and effect, pending the Award in any arbitration proceedings hereunder.

26.3.6 In the event the Party against whom the Award has been granted challenges the Award for any reason in a court of law, it shall make an interim payment to the other Party for an amount equal to 75% (seventy five per cent) of the Award, pending final settlement of the Dispute. The aforesaid amount shall be paid forthwith upon furnishing an irrevocable Bank Guarantee for a sum equal to 120 % (one hundred and twenty per cent) of the aforesaid amount. Upon final settlement of the Dispute, the aforesaid interim payment shall be adjusted and any balance amount due to be paid or returned, as the case may be, shall be paid or returned with interest calculated at the rate of 10% (ten per cent) per annum from the date of interim payment to the date of final settlement of such balance."

3. The contract forming subject matter of dispute was for rehabilitation and upgradation of an NH 161A to a 2 lane / 4 Lane with paved shoulder configuration from Kundral to Wazar in the State of Maharashtra. The petitioner bid for the said work and was successful, whereupon Letter of Acceptance (LOA) was issued to the petitioner by the Ministry of Road, Transport and Highways (MoRTH) on 29 March 2018. This culminated in an EPC contract, which was executed between the petitioner and the MoRTH on 11 April 2018. The petitioner's grievance is that the MoRTH has



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defaulted in making payments to the petitioner as per the work that the petitioner has undertaken.

4. This, it is submitted, resulted in arising of disputes and differences between the petitioner and Respondent 1.

5. In accordance with the pre-arbitration protocol envisaged by the CPC, the petitioner attempted to settle the matter by conciliation. On the effort remaining abortive, the petitioner issued a notice to the Respondents under Section 21 of the 1996 Act, invoking arbitration, on 8 September 2023. On the same date, a separate notice of arbitration as required by Rule 4 of the Society for Affordable Resolution of Disputes ('SAROD') Arbitration Rules, in accordance with which the arbitral proceedings were, per contract, to be conducted, was also issued by the petitioner.

6. Though in the present case, the notice invoking arbitration has named another learned Judge in place of Hon'ble Mr. Justice U.U. Lalit, former Chief Justice of India, who was chosen by the petitioner in Arbitration Petition 556/2024, learned counsel for the petitioner is agreeable to reference of the dispute, in the present case, also to Hon'ble Mr. Justice U. U. Lalit, so that the arbitral tribunal in both cases could be common.

7. The Respondent 1 was called upon to nominate its own Arbitrator.



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8. As Respondent 1 failed to do so, the petitioner has approached this Court under Section 11(6) of the 1996 Act.

9. Mr. Vardhman Kaushik, learned counsel for Respondent 1, has no objection to the Court appointing an Arbitrator on behalf of the respondent.

10. The quantum of demand in this case is stated to be in the region of a little above ₹ 60 Crores.

11. Accordingly, this Court requests Hon'ble Mr. Justice (Retd.) D.K. Jain (Mob: 9999922288), to act as arbitrator to arbitrate on the disputes in this matter on behalf of the respondent.

12. The learned arbitrator may file his requisite disclosure under Section 12 of the 1996 Act within a week of entering on the arbitration.

13. The arbitration would take place in accordance with the terms, conditions and protocol of the SAROD and the learned arbitrator would be entitled to fees as per the Schedule of Fees maintained by the SAROD.

14. The learned arbitrator appointed by the petitioner and the learned arbitrator appointed by this Court today, may proceed to appoint a Presiding Arbitrator. Needless to say, in the event of that exercise not being fruitful, the parties would be at liberty to approach



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the Court for appointment of a Presiding Arbitrator.

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

C.HARI SHANKAR, J

JULY 9, 2024/yg

Click here to check corrigendum, if any