



2024:DHC:7879



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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Date of decision: 08.10.2024

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ARB.P. 565/2024**KANBE WATER TECH PRIVATE LIMITED**Petitioner

Through: Mr. Subhash Chawla, Adv.

versus

ANAND DEVINE DEVELOPERS PRIVATE LIMITED & ANR.

.....Respondents

Through: Mr. Ajit Kumar, Adv. (through v/c).

CORAM:**HON'BLE MR. JUSTICE SACHIN DATTA****SACHIN DATTA, J.(ORAL)**

1. At the outset, learned counsel for the petitioner seeks to delete respondent no.2 from the array of parties. He submits that in the proposed arbitration, the petitioner only seeks relief against respondent no.1.
2. Accordingly, at the request of learned counsel for the petitioner, respondent no.2 is deleted from the array of parties.
3. The present petition under Section 11 (6) of the Arbitration and Conciliation Act, 1996 seeks appointment of an independent Sole Arbitrator to adjudicate the disputes between the parties. The disputes between the parties have arisen in the context of a Letter of Intent dated 15.03.2017 followed by a work order dated 31.05.2017 in respect of the work relating to supply, installation, testing and commissioning of fire and water pumps including water treatment equipment in connection with a real estate project.
4. Admittedly, the said work order was extended from time to time. It is the case of the petitioner that although it completed the work under the



aforesaid work order, the payment due to it was not made. As such, disputes arose between the parties as regards the alleged unpaid dues of the petitioner.

5. A legal notice dated 18.12.2023 was sent by the petitioner to the respondents, *inter alia*, stating as under:

“I hereby through this legal notice of demand call upon you to make the payment of Rs.33,50,468/- along with interest @ 24% p.a. from 01.09.2021 within 10 days of receipt of this legal notice of demand failing which my client shall be filing suit for recovery of the above amount along with interest due, needless to say at your cost, risk and consequences, which please note. Copy of this notice has been retained in my office for further necessary action in this regard.”

6. This was followed by a notice dated 18.03.2024. The said notice, *inter alia*, states as under:

“I hereby through this legal notice of demand call upon you to make the payment of Rs.33,50,468/- along with interest @ 24% p.a. from 01-09-2021 within 10 days of receipt of this legal notice failing which my client shall be compelled to file a petition before Hon’ble High Court of Delhi for appointment of an independent Arbitrator by Hon’ble Court in terms of the Arbitration Agreement contained in the work order. Since after amendment of the Arbitration and Conciliation Act, 1996, the managing Director of your company now can not appoint an arbitrator for adjudication of disputes between the parties and in that event you shall be responsible for all costs and consequences. A copy of this notice has been retained in my office for further necessary action in this regard.”

7. Learned counsel for the respondent does not dispute the existence of arbitration agreement between the parties. However, he seeks to oppose the present petition on the ground that the present petition has been filed without sending any valid invocation notice under Section 21 of the A&C Act, 1996.

8. The said contention of learned counsel for the respondent is clearly



without merit. The notice dated 18.03.2024 specifically says that in case the requisite payment is not made, requisite steps shall be taken by the petitioner for appointment of an arbitral tribunal and adjudication of the disputes through a duly constituted arbitral tribunal. It was also mentioned therein that in terms of the extant legal position, an independent Arbitrator is required to be appointed for adjudication of the disputes between the parties.

9. A coordinate bench of this Court in ***Alupro Building Systems Pvt. Ltd. v. Ozone Overseas Pvt. Ltd.*** 2017 SCC OnLine Del 7228, has expounded on the relevance of a notice under Section 21 of the A&C Act as under:

25. A plain reading of the above provision indicates that except where the parties have agreed to the contrary, the date of commencement of arbitration proceedings would be the date on which the recipient of the notice (the Petitioner herein) receives from the claimant a request for referring the dispute to arbitration. The object behind the provision is not difficult to discern. The party to the arbitration agreement against whom a claim is made, should know what the claims are. It is possible that in response to the notice, the recipient of the notice may accept some of the claims either wholly or in part, and the disputes between the parties may thus get narrowed down. That is one aspect of the matter. The other is that such a notice provides an opportunity to the recipient of the notice to point out if some of the claims are time barred, or barred by any law or untenable in fact and/or that there are counter-claims and so on.

26. Thirdly, and importantly, where the parties have agreed on a procedure for the appointment of an arbitrator, unless there is such a notice invoking the arbitration clause, it will not be possible to know whether the procedure as envisaged in the arbitration clause has been followed. Invariably, arbitration clauses do not contemplate the unilateral appointment of an arbitrator by one of the parties. There has to be a consensus. The notice under Section 21 serves an important purpose of facilitating a consensus on the appointment of an arbitrator.

27. Fourthly, even assuming that the clause permits one of the parties to choose the arbitrator, even then it is necessary for the party making such appointment to let the other party know in advance the name of



the person it proposes to appoint. It is quite possible that such person may be 'disqualified' to act an arbitrator for various reasons. On receiving such notice, the recipient of the notice may be able to point out this defect and the claimant may be persuaded to appoint a qualified person. This will avoid needless wastage of time in arbitration proceedings being conducted by a person not qualified to do so. The second, third and fourth reasons outlined above are consistent with the requirements of natural justice which, in any event, govern arbitral proceedings.

28. Lastly, for the purposes of Section 11 (6) of the Act, without the notice under Section 21 of the Act, a party seeking reference of disputes to arbitration will be unable to demonstrate that there was a failure by one party to adhere to the procedure and accede to the request for the appointment of an arbitrator. The trigger for the Court's jurisdiction under Section 11 of the Act is such failure by one party to respond.

(emphasis supplied)

10. The notice dated 18.03.2024 satisfies the requirements of Section 21 A&C Act inasmuch as it notifies the respondent about the nature of the petitioner's claims sought to be raised in arbitration

11. In the circumstances, there is no impediment to appointing an independent Sole Arbitrator to adjudicate the disputes between the parties, as contemplated in the judgements of the Supreme Court of India in ***Perkins Eastman Architects DPC v. HSCC (INDIA) Limited***, (2020) 20 SCC 760, ***TRF Limited v. Energo Engineering Projects Limited***, (2017) 8 SCC 377 and ***Bharat Broadband Network Limited v. United Telecoms Limited***, (2019) 5 SCC 755.

12. Accordingly, Mr. H. S. Sharma, District and Sessions Judge (Retd.) (Mob.: +91 9910384647) is appointed as the Sole Arbitrator to adjudicate the disputes between the parties.

13. Needless to say, the respondent shall be at liberty to raise jurisdictional/preliminary objections, if any, before the learned Sole



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Arbitrator including as regards limitation, which shall be duly considered by the learned Sole Arbitrator, in accordance with law.

14. The learned Sole Arbitrator may proceed with the arbitration proceedings subject to furnishing to the parties requisite disclosures as required under section 12 of the A&C Act; and in the event there is any impediment to the appointment on that count, the parties are given liberty to file an appropriate application in this court.

15. The learned Sole Arbitrator shall be entitled to fee in accordance with Fourth Schedule to the A&C Act; or as may otherwise be agreed to between the parties and the learned Sole Arbitrator.

16. Parties shall share the arbitrator's fee and arbitral costs, equally.

17. All rights and contentions of the parties in relation to the claims/counter-claims are kept open, to be decided by the learned Arbitrator on their merits, in accordance with law.

18. Needless to say, nothing in this order shall be construed as an expression of this court on the merits of the case.

19. The present petition stands disposed of in the above terms.

SACHIN DATTA, J

OCTOBER 8, 2024/cl