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

Pronounced on: 04.03.2024

+ **ARB.P. 650/2023**

SURENDER KISHAN GUPTA Petitioner

Through: Mr. Amit Gautam, Adv.

versus

PUBLIC WORKS DEPARTMENT NCT OF DELHI & ANR.

..... Respondents

Through: Mr. Avishkar Singhvi, Adv. along
with Mr. Naved Ahmed and Mr.
Vivek Kumar, Advs.

CORAM:

HON'BLE MR. JUSTICE SACHIN DATTA

JUDGMENT

1. The present petition under Section 11(6) of the Arbitration and Conciliation Act, 1996 (the 'A&C Act') has been filed seeking appointment of an independent Sole Arbitrator to adjudicate the disputes between the parties.

Factual Background

2. The disputes between the parties have arisen in the context of a tender process initiated by the respondent for work relating to "C/o 56 Nos. additional (G+3) SPS equivalent Class Rooms including 1 stilt, 8 nos toilet, 4 nos staircase, lift, RWH & UGR at Govt. Co Senior Secondary School at Usmanpur, Delhi (SH: SPS type building i/c internal & external water supply, sanitary installations, electrical installations, development of site fire fighting system etc.)". The petitioner participated in the said tender and



was found to be the L1 bidder. The respondent “accepted” the bid of petitioner vide letter of acceptance dated 29.04.2022. The said letter reads as under:

“Dear Sir (s),

Your percentage rate tender for the work mentioned above has been accepted on behalf of the President of India at your tendered amount Rs.10,82,37,881/- (Rs. Ten crore eighty two lakh thirty seven thousand eight hundred eighty one only) which is 29.29% below (Twenty nine point two nine percent below) the estimated cost of Rs. 15,30,72,947/- (Rs. Fifteen crore thirty lakh seventy two thousand nine hundred forty seven only).

1. The abatement shall not be applicable on the credit Sub-Head/Item for dismantling/demolition.

2. You are requested to submit the Performance guarantee @ 3% of tender value of work i.e. Rs. 32,47,137/- (Rs. Thirty two lakh forty seven thousand one hundred thirty seven only) in favour of "Executive Engineer, CBMD M-232, PWD, New Delhi: within 07 days (Seven days) from the date of issue of this letter. The Performance Guarantee shall be in in the prescribed form as provided in clause I of the General Conditions of Contracts for CPWD Works and shall be valid upto 60 Days from the due date of completion.

3. On receipt of prescribed Performance Guarantee, necessary letter to commence the work shall be issued and site of work shall be handed over to you thereafter.

4. Please note that the time allowed for carrying out the work is 330 Days which shall be reckoned from the 10 (Ten) days or date of handing over of site whichever is later.

5. In case you fail to deposit Performance Guarantee as mentioned above within the prescribed period your Earnest Money shall be forfeited without further notice.

6. The contractor shall obtain necessary licence as required under section 12 of the Contract (Labour regulation and abolition Act 1970) before commencement of the work.

7. No running Account Bill shall be paid for the work till the applicable labour licences registration with EPFO, ESIC & BOCW Welfare Board including Provident Fund Code No. if applicable and also ensure the



compliance of aforesaid provisions by the sub contractors, if any engaged by the contractor for the said work whatever applicable are submitted by the contractor to the Engineer-in-Charge. The ESI and EPF contribution on the part of the employer in respect of this contract shall be paid by the contractor. These contributions on the part of the employer paid by the contractor shall be reimbursed by the Engineer-in-Charge to the contractor on actual basis on submission of documentary proof of payment provided same are in order.”

3. Thereafter, the petitioner deposited the performance guarantee in the form of an FDR amounting to Rs. 32,47,137/- with the respondent on 06.05.2022. Thereafter, vide letter dated 07.05.2022, the respondent has “awarded the contract” to the petitioner. The said letter reads as under:

“eTendering System Government of NCT of Delhi

Date: 07-May-2022

Dear User,

Sub: Congratulations! Award Of
Contract(AOC) for the tender-reg

With reference to your bid submission 1277372, it is informed that you have been awarded the contract for the following tender, by the duly constituted committee.

Tender Id : 2022_PWD_218994_1
30/CE(Proj)Edu(M)/
Tender reference no : PWD/2021-22
Public Works
Organisation Chain: Department|| CE/SE/
M2-M23|| EE/M232

Thank you for the interest shown in the participation of the tender.

In case of any clarifications or feed back, you may contact Tender Inviting Authority(TIA).

We wish you all the best,

Tender Inviting Authority

[Note : This is an auto generated mail from the eprocurement system. Please do not reply to this e-mail id.]”



4. It is averred in the petition that the petitioner, in the interest of timely and smooth progress of the work, started the procurement of the steel and cement and also started the construction of a godown to store the steel and cement at site alongwith construction of labour hutments, site offices, staff rooms and site laboratory etc. However, vide letter dated 25.07.2022, the respondent foreclosed the contract. The said letter reads as under:

“(NIT No. 30/CE(Proj.)Edu.(M)/PWD/2021-22)

Sir,

With reference to above cited subject, the competent authority has accepted to fore-close the above mentioned contract under clause-3A of the agreement.

Therefore, I Er. Santosh Kumar Meena, Executive Engineer, Education M (East & North-East), PWD, Delhi in exercise of powers conferred on me by the aforesaid agreement for and on behalf of the President of India hereby notify the said contract as Fore-closed on 25.07.2022 under Clause-3A of the agreement.

Please note that you shall have no claim to any payment of compensation or otherwise whatsoever, on account of any profit or advantage which you might have derived from the execution of the work in full but did not derive in consequence of the foreclosure of the whole.

So you are requested to collect the Performance Guarantee from this office.”

5. In reply to the said foreclosure letter, the petitioner vide its letter dated 26.09.2022 alleged breach of terms of the contract by the respondent and submitted that the foreclosure of the contract is totally illegal, against the terms of the contract and not acceptable to the petitioner.

6. In response thereto, the respondent vide its letter dated 10.11.2022 stated that the respondent has never awarded the work and handed over the site to the petitioner and the work was foreclosed only after getting approval from the competent authority.



7. The applicable General Conditions of the Contract (“GCC”) incorporates an arbitration clause in the following terms:-

“Clause 25

Except where otherwise provided in the contract, all questions and disputes relating to the meaning of the specifications, design, drawings and instructions here-in before mentioned and as to the quality of the workmanship or materials used on the work or as to any other question, claim, right, matter or thing whatsoever in any way 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 be dealt with as mentioned hereinafter;

(i) if the contractor considers any work demanded of him to be outside the requirements of the contract, or disputes any drawings, record or decision given in writing by the Engineer-in-Charge or if the Engineer in Charge considers any act or decision of the contractor on any matter in connection with or arising out of the contract or carrying out of the work, to be unacceptable and is disputed, such party shall promptly within 15 days of the arising of the disputes request the Chief Engineer/ CPM, or where there is no Chief Engineer/CPM, request the Additional Director General/Special Director General ,who shall refer the disputes to Dispute Redressal Committee (DRC) within 15 days along with a list of disputes with amounts claimed if any in respect of each such dispute. The Dispute Redressal Committee (DRC) give its decision within a period of 60 days extendable by 30 days by consent of both the parties from the receipt of reference from CE/CPM/ADG/SDG. The constitution of Dispute Redressal Committee (DRC) shall be as indicated in Schedule 'F'. Provided that no party shall be represented before the Dispute Redressal Committee by an advocate/legal counsel etc.

The DRC will submit its decision to the concerned ADG/SDG for acceptance. ADG/ SDG in a time limit of 30 days from receipt of DRC decision will convey acceptance or otherwise on the said decision .If the Dispute Redressal Committee (DRC) fails to give its decision within the aforesaid period or the ADG/SDG fails to give his decision in the aforesaid time limit or any party is dissatisfied with the decision of Dispute Redressal Committee (DRC)/ ADG/ SDG the neither party may within a period of 30 days from the receipt of the decision of Dispute Redressal Committee (DRC)/ ADG/SDG or on expiry of



aforesaid the time limits available to DRC/ ADG/SDG ,may give notice to the Chief Engineer/CPM, CPWD, in charge of the work or if there be no Chief Engineer/ CPM, the Additional Director General/Special Director General concerned or if there be no Additional Director General/ Special Director General, the Director General, CPWD for appointment of arbitrator on prescribed proforma as per Appendix XVII under intimation to the other party.

It is a term of contract that each party invoking arbitration must exhaust the aforesaid mechanism of settlement of claims/disputes prior to invoking arbitration.

The CE/ADG/ SDG shall in such case appoint the sole arbitrator or one of the three arbitrators as the case may be within 30 days of receipt of such a request and refer such disputes to arbitration. Wherever the Arbitral Tribunal consists of three Arbitrators, the contractor shall appoint one arbitrator within 30 days of making request for arbitration or of receipt of request by Engineer-in-charge to CE/ADG/ SDG /DG for appointment of arbitrator, as the case may be, and two appointed arbitrators shall appoint the third arbitrator who shall act as the Presiding Arbitrator. In the event of

- (a) A party fails to appoint the second Arbitrator, or*
- (b) The two appointed Arbitrators fail to appoint the Presiding Arbitrator, then the Director General, CPWD shall appoint the second or Presiding Arbitrator as the case may be.*

(ii) Dispute or difference shall be referred for adjudication through arbitration by a Tribunal having sole arbitrator where claimed amount is Rs. 20 Crore or less. Where claimed Value is more than Rs. 20 Crore, Tribunal shall consist of three Arbitrators as above. The requirements of the Arbitration and Conciliation Act, 1996 (26 of 1996) and any further statutory modification or re-enactment thereof and the rules made there under and for the time being in force shall be applicable.

It is a term of this contract that the party invoking arbitration shall give a list of disputes with amounts claimed, if any, in respect of each such dispute along with the notice for appointment of arbitrator and giving reference to the decision of the ADG/ SDG on the finding I recommendation of DRC.

It is also a term of this contract that member(s) of the Arbitration Tribunal shall be a Graduate Engineer with experience in handling public works engineering contracts, and further he shall have earlier



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worked at a level not lower than Chief Engineer/equivalent (i.e. Joint Secretary level of Government of India). This shall be treated as a mandatory qualification to be appointed as arbitrator.

Parties, before or at the time of appointment of Arbitral Tribunal may agree in writing for fast track arbitration as per the Arbitration and Conciliation Act, 1996 (26 of 1996) as amended in 2015.

Subject to provision in the Arbitration and Conciliation Act, 1996 (26 of 1996) as amended in 2015 whereby the counter claims if any can be directly filed before the arbitrator without any requirement of reference by the appointing authority. 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 party exceeds Rs. 1,00,000/-, the arbitrator shall give reasons for the award.

It is also a term of the contract that fees payable to arbitral tribunal shall be as approved by DG, CPWD, OM issued vide no.2/2006/SE(TLC)/CSQ/137 dated 19-11-2019 (or its latest amendment as approved by DG, CPWD). This fee shall be shared equally by parties.

The place of arbitration shall be as mentioned in Schedule F. In case there is no mention of place of arbitration, the arbitral tribunal shall determine the place of arbitration.

The venue of the arbitration shall be such place as may be fixed by the Arbitral Tribunal in consultation with both the parties. Failing any such agreement, then the Arbitral Tribunal shall decide the venue.”

8. Disputes having remained unresolved between the parties, the petitioner invoked the aforesaid Clause 25 vide its letter dated 10.11.2022 and sought referral of the disputes to Dispute Redressal Committee (DRC). Disputes having not been referred to the DRC by the respondent, the petitioner vide its letter dated 14.02.2023 sought appointment of an arbitrator. In response to the said letter, the respondent vide its letter dated 06.04.2023 denied the claims raised by the petitioner and stated that the work was not awarded to the petitioner and no agreement was drawn, and



the work was closed due to administrative reasons.

Submissions of the parties

9. Learned counsel for the respondent has objected to the present petition on the ground that in the present case, there exists no concluded contract between the parties and therefore, no arbitration agreement exists between the parties. It is submitted that the respondent has right under Clause 14¹ of the Information and Instructions for Bidders and Clause 4.0² of Section-II thereof to accept or reject any bid and/or to annul the process and reject all bids at any time. It is submitted that even though the bid of the petitioner was accepted, the award letter was not issued to the petitioner. It is submitted that the letter dated 07.05.2022 is a system generated message sent to the petitioner after submission of the performance guarantee and the same does not constitute a binding agreement between the parties. It is also submitted that the respondent vide its letter dated 15.06.2022, clearly stated that time for completion of the work i.e., 330 days, would commence from 10 days from the date of said letter or the date of handing over of site whichever is later and also informed to the petitioner that the award letter has not been issued to it. It is submitted that work could only have been awarded to the petitioner after the shifting of trees could be done. It is submitted that in the said facts, the work was foreclosed by the respondent vide letter 25.07.2022. In the reply affidavit filed on behalf of the respondent, various pleas have also been raised on the merits of the claims

¹14. The competent authority on behalf of the President of India does not bind itself to accept the lowest or any other bid and reserves to itself the authority to reject any or all the bids received without the assignment of any reason. All bids in which any of the prescribed condition is not fulfilled or any condition including that of conditional rebate is put forth by the bidders shall be summarily rejected.

²4.0 Final Decision Making Authority

The employer reserves the right to accept or reject any bid and to annul the process and reject all bids at any time, without assigning any reason or incurring any liability to the bidders.



sought to be raised by the petitioner.

10. In response to the aforesaid objections, learned counsel for the petitioner has submitted that a concluded contract exists between the petitioner and respondent. It is submitted that the respondent has accepted the bid submitted by the petitioner vide letter dated 29.04.2022 and requested the petitioner to deposit a performance guarantee as contemplated under Clause 1 of GCC; in furtherance to the said letter the petitioner even submitted the performance guarantee. It is stated that in the circumstances, the contract between the parties stood concluded. It is further submitted that the letter dated 25.07.2022 sent by the respondent foreclosing the contract under Clause 3A of the GCC itself shows that an agreement was into existence which was foreclosed by the respondent. It is submitted that on the one hand the respondent has invoked various clauses of the GCC but on the other hand is preventing the petitioner from invoking Clause 25 of the same GCC. It is also submitted that definition of contract includes documents forming the tender and acceptance thereof. It is thus prayed that the disputes be referred to arbitration.

Analysis And Findings

11. Having perused the record and having heard learned counsel for the parties, no merit is found in the objections raised by learned counsel for the respondent.

12. The expression 'contract' has been defined in the applicable Conditions of Contract as under:

"1. The Contract means the documents forming the tender and acceptance thereof and the formal agreement executed between the competent authority on behalf of the President of India and the Contract, together with the documents referred to therein including these conditions, the specifications, designs, drawings and



instructions issued from time to time by the Engineer-in-Charge and all these documents taken together, shall be deemed to form one contract and shall be complementary to one another.”

13. Thus, apart from the formal agreement, documents forming the tender and acceptance thereof means the contract.

14. Undisputedly, the bid submitted by the petitioner for the tender floated by the respondent was “accepted” by the respondent vide letter dated 29.04.2022.³ Vide the said letter, the petitioner was requested to submit a performance guarantee in the prescribed form as provided in Clause 1 of the GCC. It was also mentioned therein that on receipt of performance guarantee the necessary letter to commence the work shall be issued and the site of work shall be handed over to the petitioner. It is further mentioned that failure to pay performance guarantee shall entail forfeiture of Earnest Money. Thereafter, the petitioner submitted the performance guarantee and the petitioner was “awarded the contract” vide e-mail communication dated 07.05.2022 sent by the respondent. The fact that the said e-mail was “auto generated” does not dilute or undermine the implication of what is stated therein.

15. In the aforesaid factual conspectus, *prima facie*, a concluded contract did come into existence. The absence of the signing of formal agreement does not detract from the said position. Clause 25 of GCC can certainly be invoked by the petitioner and non-signing of the formal agreement will not extinguish the arbitration agreement between the parties. In this context, in ***Jhar Mining Infra (P) Ltd. v. Managing Coalfields Ltd.***,⁴ it has been held

³The acceptance of the petitioner’s bid is reaffirmed in para 4 of the reply-affidavit filed on behalf of the respondent.

⁴2022 SCC OnLine Ori 3027



as under:

“12. It must be noted at the outset, therefore, that by acknowledging that the Petitioner as the lowest bidder i.e. L1 and therefore, the ‘Preferred Bidder’, the LoI was issued by MCL to the Petitioner. There is prima facie merit in the contention of the Petitioner that by accepting the LoI a contractual relation came into existence between the parties.”

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18. While therefore, there may not be a concluded formal contract, it would not be entirely correct for MCL to contend that there is no contractual relationship whatsoever between the parties. The reference in Clause 4(A).37 to the disputes arising “during the course of execution” has to be understood as disputes arising even prior to the actual execution of the contract, since clause 1.3.2.5 envisages obligations of the parties at a stage even prior to the formal execution of the contract.

19. Moreover, Clause 4(A).37 and Clause 4(A).37A have to be read in continuation and the failure of the ‘successful bidder’, [which is in this case would include the ‘preferred bidder’ and ‘lowest bidder’ which is the Petitioner] and MCL to resolve the dispute by the in-house mechanism, which would entitle either party to invoke the arbitration clause. It would also therefore not be correct for the MCL to contend that there is no arbitration agreement in terms of Section 7 of the Act.”

16. In ***National Highways Authority of India v. R.S.B. Projects Ltd.***⁵, it has been held as under:

“23. The interpretation now sought to be placed by learned Senior counsel for NHAI on the above clauses of the bid documents by the NHAI is not in consonance with the spirit of the said clauses. The requirement of the above clause was satisfied except that the formal signing of the form of agreement in terms of Clause 33.4 did not take place. This situation was brought upon by the NHAI wrongly interpreting this Court's interim order dated 15th July 1999 in the writ petition filed by BRAAPL and placing the award of work in favour of the Respondent by its letter dated 8th July 1999 under abeyance by its letter dated 26th July 1999. Otherwise, the letter dated 8th July 1999 clearly constituted an award of work with the NHAI unambiguously informing the Respondent by the said letter that its bid dated 21st June 1999 “is hereby accepted by NHAI” and requesting the Respondent to furnish performance security in accordance with Clause 34.1 of the ‘Instructions to Bidders’. NHAI perhaps realized that it had

⁵2012 SCC OnLine Del 965



erred and, therefore, issued a subsequent letter on 11th October 1999 treating the letter dated 26th July 1999 as withdrawn.

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25. In its letter dated 8th July 1999, the Respondent also informed the NHAI that it had already paid Rs. 8,31,975/- to the bank as bank charges and was already incurring heavy losses of business by desisting from tendering for other works elsewhere in anticipation of starting the work immediately since July 1999. The NHAI does not appear to have responded to the said letter. Even the subsequent letter dated 6th July 2000 by the Respondent to NHAI asking it to make available the site for work to be commenced was not replied to. Ultimately, on 21st December 2000 the NHAI decided to cancel the award of work of Contract Package No. NS/3 (DL) and to invite fresh bids for the package.

26. The letter dated 21st December 2000 itself is an acknowledgment by NHAI that there was in fact an award of work to the Respondent. Otherwise, there was no need to cancel such award of work in the first place. Even otherwise, there could be no manner of doubt that a concluded contract did come into existence. The absence of the signing of formal agreement in terms of Clause 34.1 of the bid document would make no difference to that position. In coming to the above conclusion in the impugned Award, the Arbitral Tribunal placed reliance on the decision of the Supreme Court in Banarsi Das v. Cane Commissioner, UP AIR 1963 SC 1417 and the decision of this Court in Progressive Constructions Limited v. Bharat Hydro Power Corporation Limited AIR 1996 Del 1992. This Court finds no error having been committed by the Arbitral Tribunal in this regard."

17. A Division Bench of this Court in **DDA v. York Tech (P) Ltd.**,⁶ has held as under:

"7. It is well settled that a tender is an invitation to offer, the bid is an offer and a letter of intent is an acceptance. The contract had, therefore, been concluded by the issuance of letter of intent in the present case. A contract could only be broken if either of the parties to the contract does not perfume his part of obligation. The Respondent is prepared to deposit the entire amount for the plot measuring 400 sq. m. Once the contract has been concluded, it is not open for the Appellant/DDA to cancel the e-auction for the plot in question. The Apex Court in Dresser Rand S.A. v. 1. Bindal Agro Chem Ltd. 2. K G Khosla Compressors Ltd., (2006) 1 SCC 751, has held as under:

⁶2023 SCC OnLine Del 3796



“40. It is no doubt true that a letter of intent may be construed as a letter of acceptance if such intention is evident from its terms. It is not uncommon in contracts involving detailed procedure, in order to save time, to issue a letter of intent communicating the acceptance of the offer and asking the contractor to start the work with a stipulation that the detailed contract would be drawn up later. If such a letter is issued to the contractor, though it may be termed as a letter of intent, it may amount to acceptance of the offer resulting in a concluded contract between the parties. But the question whether the letter of intent is merely an expression of an intention to place an order in future or whether it is a final acceptance of the offer thereby leading to a contract, is a matter that has to be decided with reference to the terms of the letter. Chitty on Contracts (para 2. 115 in Vol. 1, 28th Edn.) observes that where parties to a transaction exchanged letters of intent, the terms of such letters may, of course, negative contractual intention; but, on the other hand, where the language does not negative contractual intention, it is open to the courts to hold that the parties are bound by the document; and the courts will, in particular, be inclined to do so where the parties have acted on the document for a long period of time or have expended considerable sums of money in reliance on it. Be that as it may.

8. Applying the said decision to the facts of the present case, the letter of intent clearly shows that the bid of the Respondent has been accepted by the DDA and it is on the acceptance of the said bid, the Respondent was directed to pay the differential amount, i.e., the amount by which 25% of the quoted price exceeds the first stage EMD within a period of 7 days of the issuance of the letter of intent. The further payments are governed by the tender document. The failure of adhering to the plan of payment by the Respondent gave the authority to DDA to forfeit the EMD. This indicates that the contract concluded between the parties. The DDA, therefore, could not wriggle out from the contract on the ground that there was a variation of 15% of the size of the plot. The Respondent could have exercised the option of not going ahead with the conclusion of the contract, in case it was getting a plot which is less than 15% of the size of plot as given in the advertisement. Assuming the DDA had the right to withdraw from the auction it had to do the same before the issuance of the letter of intent. After conclusion of the contract, the DDA could not have exercised that option of withdrawing from the contract. The action of the DDA in the impugned letter dated 18.04.2022, therefore, is a complete arbitrary exercise of power, which could not pass the test of Article 14 of the Constitution of India.”



18. Further, in the present case, the letter dated 25.07.2022 sent by the respondent foreclosing the contract under Clause 3A of the GCC is an acknowledgment by respondent that there was in fact an award of work to the petitioner. Otherwise, there was no need to foreclose “the contract”.

19. *Prima facie*, there was a contract between the parties and the disputes arising thereof are to be resolved as per the arbitration agreement contained in Clause 25 of GCC.

20. Reliance placed by learned counsel for the respondent on the stipulations in the tender which permits the respondent to reject any or all the bids received without assignment of any reason is misconceived. In ***York Tech (P) Ltd. v. DDA***⁷ [affirmed by the Division Bench in ***DDA v. York Tech*** (supra)], this Court has held that recourse to such stipulations must be exercised prior to communicating acceptance of a validly submitted bid. It was *inter-alia* held as under:

“43. In Mihan India Ltd. (supra), the Supreme Court has also affirmed that recourse to stipulations in the tender which permit annulment of the bidding process, is permissible only prior to acceptance of the bid. In this regard, paragraph 47 of Mihan India Ltd. (supra) holds as under:

“47. Bare perusal of the above stated case-law in light of the facts of the instant case makes it clear that merely having the power of rejection of bids does not entitle authorities to exercise the said power arbitrarily. While discussing the applicability of Clauses 2.16.1, 3.3.1 and 3.3.5, it is made clear that in pre-bid procedure prior to acceptance, the bidding process may be annulled otherwise after issuance of LoA, the annulment cannot be done. The authorities further acted arbitrarily relying upon the GoM's letter dated 16.03.2020 in reference to PMIC's meeting dated 14.10.2019 in which retendering was directed. Re-tendering was not possible without ignoring the bid already accepted. Therefore, the order of annulment has been directed applying Clause 2.16.1 arbitrarily.”

⁷2022 SCC OnLine Del 3564,



44. In the present case as well, a reading of the tender conditions as whole leave no manner of doubt that although it is provided that the respondent/DDA has freedom to either reject the bid or annul the bidding process altogether or to withdraw any plot from the auction at any stage, such option must be exercised prior to communicating acceptance of a validly submitted bid.

21. In any case, in present case, the respondent has not rejected any bid, it has “foreclosed” the contract as per Clause 3A of the GCC.

22. There is also no merit in the contention of the respondent that the work could only have been awarded after the site was handed over to the petitioner and/or after the shifting of trees could be done. There is simply no such stipulation in the tender document. *Prima facie*, the handing over of site to the petitioner is only relevant for reckoning the date of start of the work.

23. In view of the aforesaid, there is no impediment in appointing an independent sole arbitrator to adjudicate the dispute between the parties.

24. Accordingly, Mr. Pulin Kumar, Advocate, (Mobile No.9810797445) is appointed as the Sole Arbitrator to adjudicate the disputes between the parties.

25. The respondents shall be entitled to raise preliminary objections as regards jurisdiction/arbitrability, which shall be decided by the learned arbitrator, in accordance with law.

26. 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.

27. 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.



28. The parties shall share the arbitrator's fee and arbitral costs, equally.
29. 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.
30. Needless to say, nothing in this order shall be construed as an expression of this court on the merits of the case.
31. The present petition stands disposed of in the above terms.

SACHIN DATTA, J

MARCH 04, 2024/hg