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IN THE HIGH COURT OF DELHI AT NEW DELHI

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ARB.P. 694/2023

M/S SUNHERI BAGH BUILDERS PVT LTD Petitioner

Through: Mr. Avinash Trivedi, Mr. Anurag
Kaushik, Advs.

versus

DELHI TOURISM AND TRANSPORTATION DEVELOPMENT
CORPORATION LTD Respondent

Through: Mr. Siddhant Nath, Mr. Bhavishya
Makhija and Mr. Akshay Pratap
Singh, Advs.

CORAM:

HON'BLE MR. JUSTICE JASMEET SINGH

ORDER

07.02.2024

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1. This is a petition under Section 11(6) of the Arbitration and Conciliation Act, 1996 seeking appointment of an Arbitrator to adjudicate the disputes between the parties.
2. The case of the petitioner is that the respondent had accepted the tender of the petitioner and issued letter of acceptance no. DTTDC/Engg./I(196)/EE(PB-II)/361 dated 15.07.2023 awarding the work of Construction of Sub-Registrar office at Bhalswa, Delhi. The contractual amount of the work was Rs. 4,72,58,125/-.
3. Mr. Nath, learned counsel for the respondent states that he does not wish to rely on his reply and will address arguments only on the petition filed by the petitioner.
4. It is stated that the respondent in terms of Clause 9 of the contract had six month time from the date of submission of final bill to make the payment



which expired on 22.05.2017.

5. As per Mr. Trivedi, learned counsel for the petitioner, the petitioner had completed the work and submitted his final bill for the subject work on 23.11.2016 pursuing the same for payment with the respondent department, however the respondent failed to make the payment.

6. Thereafter, there were exchange of letters and ultimately the petitioner invoked the arbitration in terms of clause 25 of the GCC on 12.04.2022. Since neither the claims were settled nor an arbitrator was appointed, the petition has been filed.

7. Mr. Nath, learned counsel for the respondent states that in the present case the only issue is whether the claims of the petitioner are within the limitation. He states that the petitioners own final bill is dated 23.11.2016 and invocation of the arbitration is in the year 2022 and hence beyond the period of 3 years.

8. I am unable to agree with the contentions.

9. A perusal of the documents shows that the respondent did not respond to the final bill of the petitioner dated 23.11.2016, up till 20.10.2020

10. The respondent states that in order to finalise the final bill, joint inspection was to be carried out and they had asked the petitioner to join the joint inspection. Thereafter, the respondent issued a show cause notice dated 13.10.2021 for non-compliance of the contractual obligations by the petitioner. Subsequently on 12.01.2022, the respondent terminated the contract of the petitioner whereby the respondent asserted that the work assigned to the petitioner was not completed.

11. While deciding the Section 11 petition, I am of the view that the final bill dated 23.11.2016 of the petitioner was always under consideration of the



respondent till they replied to it on 20.10.2020. Additionally, the respondent on 06.10.2020 had called the petitioner for inspection.

12. However, the respondent on 13.10.2021 issued a Show Cause Notice calling upon the petitioner to complete the work assigned to the petitioner and ultimately terminated the contract of the petitioner on 12.01.2022. Hence the claims of the petitioner for the work done for the respondent were always surviving and only fructified on 12.01.2022 when the contract was terminated.

13. Thereafter, the petitioner invoked the arbitration clause and has filed the present petition.

14. In this view of the matter, for the purposes of deciding this petition, I am of the view that the claims of the petitioner is within the period of limitation.

15. The observations made in the order are only for the purposes of deciding this petition and shall have no bearing on the merits of the matter.

16. For the said reasons, the petition is allowed. Since the parties are still having disputes between them, the following directions are issued:-

- i) Mr. Ajay Gupta (Mob. No. 9810270876) 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.

17. The petition is allowed and disposed of in the aforesaid terms.

JASMEET SINGH, J

FEBRUARY 7, 2024/NG

Click here to check corrigendum, if any