



2024 : DHC : 4272



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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Date of decision: 20th May, 2024

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ARB.P. 683/2024**M/S NITYA NAND AND SONS CONTRACTORS PVT. LTD.**

....Petitioner

Through: Ms. Amrita Panda, Advocate.

versus

UNION OF INDIA

...Respondent

Through: Mr. Ravi Kant Srivastava,
Senior Panel Counsel.**CORAM:****HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA****J U D G M E N T (oral)****I.A. 29638/2024 (Exemption)**

1. Allowed, subject to all just exceptions.
2. The application is disposed of.

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3. The present Petition under Section 11 of the Arbitration and Conciliation Act, 1996 (*hereinafter referred to as the "Act, 1996"*) has been filed on behalf of the petitioner seeking appointment of an independent and impartial sole Arbitrator to adjudicate the disputes having arisen between the parties.
4. It is submitted that the petitioner executed the Contract bearing No. C.A. No. CEWAC/PAL/01/2016-17 for Construction of VVIP Receptorium, Phase II at AF Station, Palam with the respondent.
5. The work on the Contract commenced on 03.02.2016 and the same ought to have been completed in 12 months i.e., 02.05.2017. However, the issues began arising at the site from the very outset for reasons solely

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attributable to the respondent and consequently, the work got delayed and the same was finally completed on 31.08.2018.

6. It is submitted that even after completion of the work, the RAR remained pending and the Final Bill which was submitted by the petitioner to the respondent on 08.04.2019 also remained unpaid for than three years.

7. The respondent *vide* its Letter dated 05.09.2018 acknowledged the satisfactory completion of the work done by the petitioner.

8. It is submitted that after submitting the Final Bill on 31.05.2019, the petitioner requested the respondent to make payment of Final Bill as well as of pending RARs.

9. Finally on 06.05.2020, after more than 18 months since satisfactory completion of works, there was no resolution of the pending issues by the respondent, the petitioner issued the Notice dated 06.05.2020 to the respondent invoking arbitration in terms of Clause 70 of IAFW-2249 incorporated in the Contract between the parties.

10. Another Notice dated 23.05.2020 issued to the respondent by the petitioner seeking appointment of Arbitrator. The respondent *vide* Letter dated 24.12.2020 gave a reply where the respondent sent Agreement for Appointment of Arbitrator and instructed petitioner to sign the same and send it to the Engineer-in-Charge for further proceeding and the petitioner duly complied with the same on 15.11.2021. However, no steps were taken by the respondent to resolve the disputes even after admitting the Arbitration Agreement between the parties.

11. The petitioner left with no option has filed the present petition seeking appointment of an independent and impartial Sole Arbitrator.

12. Learned Senior Panel Counsel appearing on advance notice on behalf



of the respondent, submits that he has no objection if the present petition is allowed.

13. Submissions heard.

14. In view of the submissions made as well as Clause 70 of IAFW-2249 which provides for arbitration and the petitioner has raised the arbitrable disputes and without prejudice to the rights and contentions of the parties, the present petition is allowed and Mr. Tariq Khan, Advocate, Mobile No.9999663628 is hereby appointed as the Arbitrator to adjudicate the disputes between the parties.

15. The parties are at liberty to raise their respective objections before the Arbitrator.

16. The fees of the learned Arbitrator would be fixed in accordance with the Fourth Schedule of the Act, 1996 or as consented by the parties.

17. This is subject to the Arbitrator making necessary disclosure as under Section 12(1) of the Act, 1996 and not being ineligible under Section 12(5) of the Act, 1996.

18. The arbitration shall be conducted under the aegis of Delhi International Arbitration Centre, Delhi High Court.

19. The parties are directed to contact the Arbitrator within one week of being communicated a copy of this Order to them by the Registry of this Court.

20. Accordingly, the present petition is disposed of in the above terms.

**(NEENA BANSAL KRISHNA)
JUDGE**

MAY 20, 2024/RS