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

+ **ARB.P. 756/2024**

M/S MATHRA DASS AHUJA AND SONSPetitioner

Through: Mr Avinash Trivedi, Mr Anurag
Kaushik and Mr Rahul Aggarwal,
Advvs.

versus

**DELHI TOURISM AND TRANSPORTATION
DEVELOPMENT CORPORATION LTD.**Respondent

Through: Mr Sri Harsha Peechara and Mr
Akshat Kulshreshtha, Advvs.

CORAM:

HON'BLE MR. JUSTICE JASMEET SINGH

ORDER

03.09.2024

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1. This is a petition filed under Section 11(6) of the Arbitration and Conciliation Act, 1996 seeking appointment of an Arbitrator for adjudication of disputes between the parties.
2. The brief facts are that the respondent published a tender for execution of work of Labs setup for Medical Lab Technology for Delhi Skill & Entrepreneurship University ('DSEU') at IIT, Sector-9, Dwarka, New Delhi.
3. The petitioner duly participated in the tender process and was declared as a successful bidder and the respondent issued acceptance letter on 25.11.2021 bearing No. DTTDC/Engg/EE(JP)/DSEU/259.
4. Thereafter, the petitioner also submitted a performance bank guarantee *vide* letter dated 29.11.2021 and an Agreement was also executed between the parties bearing No. 07/EE(JP)/DTTDC/2021-22 for a



contractual amount of Rs 62,03,235/-.

5. It is stated that the petitioner complied with its contractual obligations but on account of some disputes, the entire amount due and payable to the petitioner was not paid by the respondent.

6. The arbitration clause is contained as Clause 25(ii) of the Agreement which reads as under:

“CLAUSE 25

Settlement of Disputes & Arbitration

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(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 reenactment 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 / 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 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.”

7. Since there were disputes between the parties, the petitioner invoked arbitration *vide* legal notice dated 09.04.2024.

8. Mr Kulshreshtha, learned counsel appears on behalf of the respondent and states that a reply has been filed, however, the same is not on record. A copy of reply has been handed over in court and the same is taken on record.

9. As per the reply, it is stated that the client for whom the petitioner had undertaken the work is DSEU and it is DSEU which should be made a party to the present petition.

10. I am of the view that the petitioner does not have any privity of contract with DSEU. The contract under which arbitration is sought is between the petitioner and the respondent and if the petitioner does not want to implead DSEU, the petitioner cannot be forced to do so. The respondent



on the other hand, is free to avail of its legal remedies against DSEU in accordance with law.

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

- i) Mr Chritarth Palli, Advocate (Mob. No. 9888277971) is appointed as a Sole Arbitrator to adjudicate the disputes between the parties.
- ii) 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/counter-claims and 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.

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

JASMEET SINGH, J

SEPTEMBER 3, 2024

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Click here to check corrigendum, if any