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IN THE HIGH COURT OF DELHI AT NEW DELHI*Date of Decision: 12th February, 2024*

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ARB.P. 895/2023**GEE INTERNATIONALS**

..... Petitioner

Through: Mr. Abhishek Kaushik, Ms. Swati
Roy Prasad, Advs. (M: 9953937934)

versus

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

..... Respondent

Through: Mr. Sriharsha Peechara, Ms. Harsita
Gupta, Mr. Shubham Kumar Mishra
(Advs.) (Mob. No. 8512841934)**CORAM:****JUSTICE PRATHIBA M. SINGH****Prathiba M. Singh, J. (Oral)**

1. This hearing has been done through hybrid mode.
2. This is a petition under Section 11(6) of the Arbitration and Conciliation Act, 1996 seeking appointment of an Arbitrator in terms of the agreement dated 19th September, 2018. The Petitioner was awarded a tender of construction and establishment of a world class skill development centre at the society of self-employment at Nand Nagri by the Delhi Tourism And Transportation Development Corporation Ltd. (hereinafter, 'DTTDC'). The tender was floated in April, 2018 and the award of work took place on 19th September, 2018. Subsequently there was additional work at SKV West Vinod Nagar School for which an arrangement was entered into between the parties on 15th October, 2018 and Respondent signed the contract for the same on 2nd November, 2018. Completion of the work was to happen till



31st October, 2018 and 29th June, 2019 for the works by the Petitioner. Finally, the work was completed on 20th March, 2020.

3. The Petitioner had various bills, which according to it, were unpaid. It has sent repeated notices to the Engineer-in-Charge including notices dated 14th August, 2021 and 7th December, 2021. Since the same were not resolved, the Petitioner also sought the constitution of the Dispute Resolution Committee (‘DRC’) dated 2nd April, 2022. Since the DRC was also not constituted, the Petitioner then invoked the arbitration clause on 9th June, 2022 and sought appointment of an Arbitrator. Since there was no response, the present petition has been filed.

4. It is stated by the Respondent that the final bill payment was made. Further, on behalf of Respondent it is contended that on 12th April, 2022 the Petitioner was called for a meeting with the Chief Engineer. However, Petitioner did not appear, therefore, the Petitioner ought to be directed to follow the scheme provided under the dispute resolution clause.

5. The disputes resolution clause in the present case reads as under:

“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 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 on any matter in connection with or arising out of the contract or carrying out of the work, to be unacceptable, he shall promptly within 15 days request the Superintending Engineer in writing for written instruction or decision. Thereupon, the Superintending Engineer shall give his written instructions or decision within a period of one month from the receipt of the contractor's letter.

If the Superintending Engineer fails to give his instructions or decision in writing within the aforesaid period or if the contractor is dissatisfied with the instructions or decision of the Superintending Engineer, the contractor may, within 15 days of the receipt of Superintending Engineer's decision, appeal to the Chief Engineer who shall afford an opportunity to the contractor to be heard, if the latter so desires, and to offer evidence in support of his appeal. The Chief Engineer shall give his decision within 30 days of receipt of contractor's appeal. If the contractor is dissatisfied with the decision of the Chief Engineer, the contractor may within 30 days from the receipt of the Chief Engineer decision, appeal before the Dispute Redressal Committee (DRC) along with a list of disputes with amounts claimed in respect of each such dispute and giving reference to the rejection of his disputes by the Chief Engineer. The Dispute Redressal Committee (DRC) shall give his decision within a period of 90 days from the receipt of Contractor's appeal. The constitution of Dispute Redressal Committee (DRC) shall be as indicated in Schedule 'F'. If the Dispute Redressal Committee (DRC) fails to give his decision within the aforesaid period or any party is



dissatisfied with the decision of Dispute Redressal Committee (DRC), then either party may within a period of 30 days from the receipt of the decision of Dispute Redressal Committee (DRC), give notice to the Chief Engineer for appointment of arbitrator on prescribed proforma as per Appendix XV, failing which the said decision shall be final binding and conclusive and not referable to adjudication by the arbitrator.

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.

(ii) Except where the decision has become final, binding and conclusive in terms of Sub Para(i) above, disputes or difference shall be referred for adjudication through arbitration by a sole arbitrator appointed by the Chief Engineer, CPWD, in charge of the work or if there be no Chief Engineer, the Additional Director General of the concerned region of CPWD or if there be no Additional Director General, the Special Director General or the Director General, CPWD. If the arbitrator so appointed is unable or unwilling to act or resigns his appointment or vacates his office due to any reason whatsoever, another sole arbitrator shall be appointed in the manner aforesaid. Such person shall be entitled to proceed with the reference from the stage at which it was left by his predecessor.

It is a term of this contract that the party invoking arbitration shall give a list of disputes with amounts claimed in respect of each such dispute along with the notice for appointment of arbitrator and giving reference to the rejection by the Chief Engineer of the appeal.



It is also a term of this contract that no person, other than a person appointed by such Chief Engineer CPWD or Additional Director General or Special Director General or Director General, CPWD, as aforesaid, should act as arbitrator and if for any reason that is not possible, the matter shall not be referred to arbitration at all.

It is also a term of this contract that if the contractor does not make any demand for appointment of arbitrator in respect of any claims in writing as aforesaid within 120 days of receiving the intimation from the Engineer-in-Charge that the final bill is ready for payment, the claim of the contractor shall be deemed to have been waived and absolutely barred and the Government shall be discharged and released of all liabilities under the contract in respect of these claims.

The arbitration shall be conducted in accordance with the provisions of the Arbitration and Conciliation Act, 1996 (26 of 1996) or any statutory modifications or re-enactment thereof and the rules made thereunder and for the time being in force shall apply to the arbitration proceeding under this clause.

It is also a term of this contract that 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 if any fees are payable to the arbitrator, these shall be paid equally by both the parties.

It is also a term of the contract that the arbitrator



shall be deemed to have entered on the reference on the date he issues notice to both the parties calling them to submit their statement of claims and counter statement of claims. The venue of the arbitration shall be such place as may be fixed by the arbitrator in his sole discretion. The fees, if any, of the arbitrator shall, if required to be paid before the award is made and published, be paid half and half by each of the parties. The cost of the reference and of the award (including the fees, if any, of the arbitrator) shall be in the discretion of the arbitrator who may direct to any by whom and in what manner, such costs or any part thereof shall be paid and fix or settle the amount of cost to be so paid.

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6. A perusal of the record would show that the Petitioner has written repeated letters on 12th November, 2021, 9th June, 2022, and 14th October, 2022, and also has also approached the Chief Engineer.
7. The Petitioner had also sought constitution of the Disputes Resolution Committee (DRC). The letter dated 12th April, 2022 by the Respondent asking the Petitioner to come for a meeting was issued much later, after the dispute was raised by the Petitioner on 14th August, 2021.
8. In terms of the above-mentioned arbitration clause, since there have been certain delays by the Respondent in resolving the disputes, the present is a fit case for appointment of an Arbitrator.
9. However, in the facts and circumstances of this case, the following directions are issued.

(1) Mr. Devashish Bharuka, Senior Advocate (M:9810517287)

is appointed as the Sole Arbitrator in the matter to adjudicate the disputes between the parties.



- (2) The Arbitrator shall enter reference in the matter on 6th May, 2024. Parties shall appear before the Arbitrator on the said date.
- (3) In the meantime, Petitioner shall also appear before the Chief Engineer DTTDC in order to explore the possibility of resolution of disputes.
- (4) If the disputes are not resolved before the Chief Engineer, the matter shall proceed for arbitration.
10. Arbitration shall be conducted under the aegis of Delhi International Arbitration Centre (DIAC) and fee of the Arbitrator shall be paid as per the Fourth Schedule of the Act, as modified by the DIAC Rules. Copy of this order be sent to the Secretary, DIAC at email [id-delhiarbitrationcentre@gmail.com](mailto:delhiarbitrationcentre@gmail.com).
11. Petition and all pending applications, if any, are disposed of.

PRATHIBA M. SINGH
JUDGE

FEBRUARY 12, 2024/dk/bh