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IN THE HIGH COURT OF DELHI AT NEW DELHI

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ARB.P. 1114/2022

VIR BHAN MITTAL

..... Petitioner

Through: Mr. Anshu Mahajan, Mr. Vikas
Aggarwal, Advs.

versus

**THE SECRETARY CENTRAL BOARD OF IRRIGATION AND
POWER.**

..... Respondent

Through: Mr. Sharad Malhotra, Adv.

CORAM:

HON'BLE MR. JUSTICE JASMEET SINGH

ORDER

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29.01.2024

1. This is a petition seeking appointment of the Sole Arbitrator to adjudicate the disputes between the parties.
2. The Arbitration Clause is contained in the Clause 37 of the Agreement dated 09.07.2018 being an agreement for "Construction of Institutional Building at Plot No. 9, Sector-32, Gurgaon (Civil, Electrical and Plumbing Works). The Arbitration Clause reads as under:-

"(37) Settlement or Dispute, Arbitration

All disputes and differences of any kind whatever arising out of or in connection with the Contract or the carrying out of works (whether during the progress of the works or after their completion, and whether before or after the determination abandonment or breach of the Contract) shall be referred to and settled by the Engineer-in-charge who shall state his decision in writing. Such decision may be in the form of a final certificate or otherwise. The



decision of the Engineer-in-charge with respect to any of the excepted matters shall be final and without Appeals as stated in Clause No. 35. But if either the employer or the Contractor be dissatisfied with the decision of the Engineer-in-charge or any matter ion or the dispute of any kind (except any of the expected matters) or as to withholding by the Engineer-in-charge of any certificate to which the Contractor may claim to be entitled. then and in any such case either party (the employer or the Contractor) may within 28 days after receiving notice to such decision give a written notice to the other party through the Engineer-in-charge requiring that such matters in dispute be arbitrated upon, Such written notice shall specify the matters which are in dispute or difference of which such written notice has been given and no other shall be and is hereby referred to the arbitration and final decision of a single Arbitrator being Fellow of the Indian Institute of Architects to be agreed upon and appointed by both the parties or in case of disagreement as to the appointment of a single arbitrator, to the Arbitration of the two Arbitrators being both fellows of the Indian Institute of Architects one to be appointed by each parties, which Arbitrators shall before taking upon themselves the burden of Reference appoint an Umpire.

The Arbitrator, the Arbitrators or the Umpire shall have power to open up. review and revise any certificate, opinion



requisition or notice, save regard to the excepted matters referred to in Clause No. 35 and to determine all matters in dispute which shall be submitted to him or them and of which notice shall have been given as aforesaid

Upon every or any such reference the cost of and incidental to the Reference and Award respectively shall be in the direction of the Arbitrator or “Arbitrators” or the Umpire who may determine the amount thereof, or direct the same to be taxed as between party and shall direct by whom and to whom and in what manner the same shall be borne and paid. The submission shall be deemed to be a submission of Arbitration within the meaning of the Indian Arbitration Act 1940 or any statutory modification thereof The award of the Arbitrator or Arbitrators or the Umpire shall be final and binding on the parties. Such Reference except as to the withholding by the Engineer-in-charge of any Certificates under Clause No. 32 to which the Contractor claims to be entitled shall not be opened or entered upon until after the completion or alleged completion of works or until after the practical cessation of the works arising from any cause unless with written consent of Employer and the Contractor. Provided always that the Employer shall not withhold the payment of the interim Certificate nor the Contractor except with the consent in writing of the Engineer-in-charge in any way delay the carrying out of works by reason of any such



matter, question or dispute referred to Arbitration but shall proceed with the work with all due diligence and shall until the decision of the Arbitrator or Arbitrators or the Umpire shall relieve the Contractor of his obligation to adhere strictly to the Engineer-in-charge instructions with regard to the actual carrying out of the work. The Employer and the Contractor hereby also agree that Arbitration under this Clause shall be condition precedent to any right or Action under the contract. "

3. Notice was issued in the petition on 26.09.2022 and a reply has been filed by the respondent.
4. On perusing the reply, the only objection taken by the respondent is that the procedure as mandated in Clause 37 of the Agreement has not been followed.
5. It is stated that by Mr. Malhotra, learned counsel for the respondent that the petitioner had to first approach the engineer-in-charge and in case the disputes between the parties still remains unresolved, the arbitration proceedings had to be initiated.
6. I have heard learned counsel for the parties.
7. In the present case, admittedly the secretary of the respondent is also the engineer-in-charge. On 06.10.2020, the petitioner wrote a letter to the director of the respondent wherein the petitioner reviewed their claims for escalation.
8. On 20.10.2020, a letter was addressed to the secretary/engineer-in-charge wherein it was brought to the notice that the petitioner has withdrawn



the amount of escalation and the payment for the work done has still not been released to the petitioner.

9. On 27.01.2021, another letter was issued to the secretary/engineer-in-charge informing that rectification of defects had been done but despite that the payment was still not been released. Thereafter, a legal notice invoking arbitration was issued.

10. From the above narration of facts, it is clear that the petitioner has approached the engineer-in-charge for the settlement of his grievances but the engineer-in-charge did not responded to the communications issued by the petitioner seeking redressal of grievances.

11. For the said reasons, I am of the view that the petitioner has followed the mandate of Clause 37 of the Agreement and has approached the engineer-in-charge raising his grievances. Only when the grievances were not addressed by the engineer-in-charge, the present petition has been filed.

12. 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 Vikram Singh, (Advocate) (Mob. No. 9868632122) 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.

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

JASMEET SINGH, J

JANUARY 29, 2024/NG

Click here to check corrigendum, if any