



2024:DHC:6596



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IN THE HIGH COURT OF DELHI AT NEW DELHI

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ARB.P. 878/2024

MR MANISH GOEL

.....Petitioner

Through: Mr. Avinash Trivedi and
Mr. Rahul Aggarwal, Advs.

versus

DELHI TOURISM AND TRANSPORTATION
DEVELOPMENT CORPORATION LTD

.....Respondent

Through: None.

CORAM:**HON'BLE MR. JUSTICE C. HARI SHANKAR****ORDER (ORAL)****28.08.2024**

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1. This is a petition under Section 11(6) of the Arbitration and Conciliation Act, 1996¹, seeking reference of the dispute between the parties to arbitration.

2. The petitioner was awarded a contract by the respondent for Construction of World Class Skill Centre at ITI, Narela, Delhi, on 16 May 2018.

3. The contract was governed by the General Conditions of Contract (GCC) which apply to government contracts. Clause 25 of the GCC envisages resolution of disputes by arbitration with a detailed pre-arbitration protocol to be followed. The clause read thus:

Signature Not Verified¹ "the 1996 Act" hereinafterDigitally Signed By: AHT
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“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, of 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) falls to give his decision within the aforesaid period or any party is dissatisfied with the decision of Dispute Redressal

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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, falling 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

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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 depute 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 coots or any part thereof shall be paid and fix or settle the amount of costs to be so paid.”

4. Thus, it would be seen that Clause 25 of the GCC envisages a three tier exercise being conducted by the claimant before arbitration is invoked. The claimant is required to approach the Superintending Engineer, followed by the Chief Engineer and, thereafter, the Dispute Redressal Committee². It is only after exhausting this protocol that the claimant can invoke arbitration.



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5. This protocol stands modified in the case of respondent, as it is a government company. Following the revised protocol, the petitioner approached the Chief Project Manager and Executive Engineer of the respondent on 15 September 2023, raising its claims. The Executive Engineer refuted the claim *vide* letter dated 19 September 2023, whereas the Chief Project Manager refuted the claim *vide* letter dated 1 November 2023. The petitioner approached the Managing Director³ of the respondent on 3 October 2023, reiterating its claims. On the MD also not providing a favourable response, the petitioner again wrote to the MD on 4 November 2023, requesting the MD to constitute the DRC. No DRC was constituted. Thereafter, the petitioner invoked arbitration by notice dated 23 January 2024, addressed to the MD of the respondent under Section 21 of the 1996 Act.

6. The respondent did not reply to the said notice either, compelling the petitioner to approach this Court by means of the present petition under Section 11(6) of the 1996 Act.

7. Despite issuance of notice to the respondent, there is no reply. The matter has been passed over and called out twice today. There is no appearance on behalf of the respondent on any occasion.

8. The Supreme Court, has in its recent decision in ***SBI General Insurance Co Ltd v Krish Spinning***⁴, held that, if an arbitration

³ MD

⁴ 2024 SCC OnLine SC 1754



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agreement exists between the parties, and the Section 11(6) of the 1996 Act petition is filed within three years of the notice invoking arbitration under Section 21, the Court has necessarily to refer the dispute to arbitration. All other issues are required to be relegated to the arbitral tribunal.

9. In view of the aforesaid, this petition has necessarily to be allowed as the respondent has not cooperated with the petitioner in having the dispute referred to arbitration.

10. Accordingly, this Court appoints Mr. Ashish Mohan, Advocate (Mob: 9910946968) as the arbitrator to arbitrate on the dispute between the parties.

11. The arbitration shall take place under the aegis of the DIAC and shall abide by its rules and regulations.

12. The arbitrator shall be entitled to charge fees as per the schedule of fees maintained by the DIAC.

13. The learned arbitrator is also requested to file requisite disclosure under Section 12(2) of the 1996 Act within a week of entering on the reference.

14. All questions of fact and law are left open to be agitated before the learned arbitrator.

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15. The petition stands allowed in the aforesaid terms.

C.HARI SHANKAR, J

AUGUST 28, 2024/aky

Click here to check corrigendum, if any

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