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

+ **ARB.P. 965/2023**

NAVIN TYAGI

..... Petitioner

Through: Mr. Sanjay Bansal, Adv. (M.
9810959432)

versus

TDI INFRACORP INDIA LTD

..... Respondent

Through: Mr Pradeep Singh, Adv. (M.
9811991736)

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WITH

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ARB.P. 966/2023

ANKIT TYAGI

..... Petitioner

Through: Mr. Sanjay Bansal, Adv.

versus

TDI INFRACORP INDIA LTD

..... Respondent

Through: Mr Pradeep Singh, Adv.

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AND

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ARB.P. 967/2023

ANKIT TYAGI

..... Petitioner

Through: Mr. Sanjay Bansal, Adv.

versus

TDI INFRACORP INDIA LTD

..... Respondent

Through: Mr Pradeep Singh, Adv.

CORAM:

JUSTICE PRATHIBA M. SINGH

ORDER

% **09.02.2024**

1. This hearing has been done through hybrid mode.

ARB.P. 965/2023

2. The present petition **ARB. P.-965/2023** under Section 11(6) of the Arbitration and Conciliation Act, 1996 (*hereinafter, '1996 Act'*) has been filed by the Petitioner-Mr. Navin Tyagi, seeking appointment of an Arbitrator in terms of Clause 29 of the '*Work Order for Construction of Road- GSB & WBM at TDI (The Grand Retreat), at Sec-88, Faridabad*'



dated 22nd July, 2019 (*hereinafter*, 'Work Order'). The said clause reads as under:-

“CLAUSE 29 ARBITRATION:

The Contractor shall keep Employer indemnified against all fines, penalties, losses or damages etc, arising out of noncompliance of the obligations cast upon the contractor under this agreement. Any disputes/ controversies in this respect will have to be met with by the contractor at his own cost. The Contractor shall show proof of his compliance to the M/s TDI INFRACORP (INDIA) LIMITED and it has been mutually agreed that the sole arbitrator for all dispute or difference shall be finally decided by Mr. kamal Taneja managing Director of TDI Group Company. In case of non-settlement of dispute, action and proceeding arising out of the Contract the same shall be governed and decided as per Indian arbitration and Conciliation Act 1996.”

3. Mr. Navin Tyagi is a contractor engaged in the business of civil contracts, who had been issued the said work order on 22nd July, 2019 by the Respondent-TDI Infracorp India Ltd. The gravamen of the dispute is the non-release of balance payments for work done, as the petition states that despite completion of the work, TDI Infracorp India Ltd failed to release the balance net payment for the work done to the tune of Rs 2,01,128/-. Further, the Respondent has also failed to release the performance guarantee and security deposit to the Petitioner and damages. A legal notice was sent to TDI Infracorp India Ltd on 18th June, 2023, via speed post on 20th June, 2023, invoking the arbitration clause and requesting the appointment of an arbitrator, which TDI Infracorp India Ltd failed to respond to.



ARB.P. 966/2023

4. The present petition **ARB. P.-966/2023** under Section 11(6) of the 1996 Act has been filed by the Petitioner-Mr. Ankit Tyagi, seeking appointment of an Arbitrator in terms of Clause 42 of the 'Work Order No. TDI/Panipat/WO1/01/2019-2010/03' (hereinafter, 'Work Order') for a project valued at Rs. 49,94,558/- plus GST for work at TDI City Panipat dated 2nd January, 2020. The said clause reads as under:-

"CLAUSE 42 ARBITRATION:

It has been mutually agreed that Chairman/MD, TDI will be the sole arbitrator for all disputes or Differences. In cases of non-settlement of dispute, action and proceeding arising out of the contract, the same shall be governed & decided as per Indian Arbitration and Conciliation Act 1996 with up-to-date amendments."

5. Mr. Ankit Tyagi is stated to have completed the work and thereafter, raised a bill for Rs. 52,28,251/-, claiming a net balance payment of Rs. 36,54,197/- after adjustments, including a retention money refund of Rs. 1,64,803/-. However, despite work completion, the TDI Infracorp India Ltd. failed to release the net balance payments and retention money, leading to disputes requiring arbitration as per Clause 41 and 42 of the Work Order, stating the Chairman/MD of TDI as the sole arbitrator. Mr. Ankit Tyagi is stated to have invoked the arbitration clause through a letter on 14th May, 2022, and also sent a legal notice on 16th May, 2022, both served on 17th May, 2022. However, TDI Infracorp India Ltd. failed to respond or appoint an arbitrator.



ARB.P. 967/2023

6. The present petition **ARB. P.-967/2023** under Section 11(6) of the 1996 Act has been filed by the Petitioner-Mr. Ankit Tyagi, seeking appointment of an Arbitrator in terms of Clause 41 of the 'Work Order no. TDI/Panipat/Road/WO' (hereinafter, 'Work Order') dated 8th October, 2020: The said clause reads as under:-

"CLAUSE 42 ARBITRATION:

It has been mutually agreed that Chairman/MD, TDI will be the sole arbitrator for all disputes or Differences. In cases of non-settlement of dispute, action and proceeding arising out of the contract, the same shall be governed & decided as per Indian Arbitration and Conciliation Act 1996 with up-to-date amendments."

7. As per the petition, TDI Infracorp India Ltd. issued the Work Order for road patchwork in TDI City Panipat, valued at Rs. 42,45,079/- plus GST, from their New Delhi office. Mr. Ankit Tyagi is stated to have completed the work, and thereafter, raised a bill for Rs. 52,28,251/-, and claimed a net balance payment of Rs. 33,21,251 after adjusting an advance payment of Rs. 19,07,000. However, despite completion, TDI Infracorp India Ltd. failed to release the net balance payments and the performance guarantee and security deposit, leading to the Mr. Ankit Tyagi to seek interest on delayed payments. Aggrieved, Mr. Ankit Tyagi invoked the arbitration clause through a letter and legal notice on 14th May, 2022, and 16th May, 2022, respectively, both served on 17th May, 2022. The said letters were not replied to by the TDI Infracorp India Ltd, and hence the present petition.

8. These are three petitions filed seeking appointment of an Arbitrator in terms of the work orders which contain an arbitration clause. According to



the Petitioners in all the three petitions, the work was completed and the Respondent- TDI Infracorp India Ltd. had even inspected the completed work. However, the payments have not been made. The matter was adjourned earlier to enable the parties to mediate. However, as on date, there is no mediation or settlement. Ld. Counsel for the Respondent has appeared and submits that the Respondent is still willing to explore settlement.

9. Accordingly, **Justice Reva Khetrapal (Retd.) (M:9871300030)** is appointed as the Arbitrator in all these three matters to adjudicate the disputes between the parties.

10. The arbitration proceedings shall be conducted under the aegis of the Delhi International Arbitration Centre (DIAC).

11. The parties are given two months' time to resolve their disputes. If there is no resolution, parties shall appear before the DIAC on 7th May, 2024. The arbitration shall be conducted in terms of the DIAC Rules. The fee of the Id. Arbitrator shall be as per the Fourth Schedule of the Act as modified by the DIAC Rules.

12. Let a copy of the present order be communicated to the Secretary, DIAC on email id - delhiarbitrationcentre@gmail.com.

13. The present petitions, along with all the pending applications, are disposed of.

PRATHIBA M. SINGH, J.

FEBRUARY 09, 2024

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