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IN THE HIGH COURT OF DELHI AT NEW DELHI

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ARB.P. 988/2023

M/S CHAUDHARY BUILDERS

..... Petitioner

Through: Mr. Nitin Sharma, Advocate.

versus

UNION OF INDIA & ANR.

..... Respondent

Through: Mr. Vikas Kumar Sharma,
Advocate with Mr. Suresh Chandra
Jaiswal, Senior Section Engineer,
Works, Railways.

CORAM:

HON'BLE MR. JUSTICE PRATEEK JALAN

ORDER

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28.02.2024

I.A. 18493/2023 (for condonation of delay)

This is an application for condonation of five days delay in refiling of the petition.

For the reasons stated in the application, the application is allowed and the delay is condoned.

ARB.P. 988/2023

1. By way of the present petition filed under Section 11 of the Arbitration and Conciliation Act, 1996 ["the Act"], the petitioner seeks appointment of an arbitrator to adjudicate disputes between the parties, arising out of an agreement pertaining to "*Resurfacing of car parking and circulating area on Ajmeri Gate side, circulating area on Pahar Ganj side on the New Delhi station, replacement of flooring of Platform no.1-2 at Sadar Bazar station and replacement of flooring of PF No.1 at New Delhi station in the section of SSE/W/NDLS under DEN/NDLS*".



2. Learned counsel for the petitioner submits that the petitioner was awarded the work vide acceptance letter dated 03.08.2016. It is submitted that Clause 64 of the General Conditions of Contract contains an arbitration clause, which provides that all disputes, with respect to the said contract, shall be referred to arbitration as per provisions of the Act.

3. Disputes having arisen between the parties, the petitioner invoked arbitration vide letter dated 31.05.2022, to which reply was also received on 04.07.2022.

4. The said arbitration clause provides that the place of arbitration would be within the geographical limits of the Division of the Railway where the cause of action arose or the Headquarters of the concerned Railway, which in the present case is at Delhi.

5. Pursuant to notice issued on 22.09.2023, Mr. Vikas Kumar Sharma, learned counsel, has entered appearance on behalf of the respondent - Union of India and filed a reply. The only objection taken by the Union to resist reference to arbitration is that the petitioner had given a “No Claims Certificate” in respect of its claims under the contract. Mr. Sharma relies upon the judgment of the Supreme Court in *NTPC vs. SPML Infra Ltd.* [(2023) 9 SCC 385] to contend that in such circumstances there is no arbitral dispute capable of reference.

6. The Union’s assertion is based not upon a single No Dues Certificate, but upon four documents which according to it make it clear that the petitioner’s claims were fully satisfied. Three of the documents are measurement books and the fourth is a document entitled “5th Addendum/Corrigendum”. Copies of the four documents have been annexed with the reply and the originals are also produced before the

[illegible]

[illegible]



7. In the noting in first measurement book bearing No. 101457, the petitioner's endorsement "measurement accepted" appears against a total figure of 268.88 sq. mtrs. In the second measurement book bearing No. 113712, the endorsement "bill accepted no claims" appears against a figure of 169.89 Kgs. The third measurement book bearing No. 82764, records an endorsement which is indecipherable, but appears next to the figure 305072.66. Mr. Sharma and Mr. Jaiswal state that this is the figure is in Rupees, and is the amount payable on account of price variation clause.

8. The fourth document is entitled "*5th Addendum/Corrigendum*" and contains descriptions of several items. It is also apparently signed by the petitioner at every page. On the third page of the document against an entry "*Amount of Schedule 'B' NS item & New N.S. items after deduction of recovery*", the figure of Rs.1,14,78,520.57/- is shown, whereas on the last page of the document an amount of Rs.18,77,995.17/- is shown against which the petitioner has endorsed "*Final Add/Corr Accepted*".

9. While analysing a claim of accord and satisfaction at the pre-reference stage, the Court is required only to see if the petitioner's claims are *ex facie* barred. The general rule laid down in the judgment of the Supreme Court in *Vidya Drolia vs. Durga Trading Corpn.* [(2021) 2 SCC 1] and *NTPC* (supra), cited by Mr. Sharma, is that issues of arbitrability are to be adjudicated by the arbitral tribunal. In *NTPC* (supra), the arbitral tribunal has been described as the "*preferred first authority to determine and decide all questions of non-arbitrability*". However, an exception is made when a case is manifestly and *ex facie* non-arbitrable. This must be adjudged as a demurrer, without a full review of contested facts. Only if



the Court is left without a vestige of doubt, would reference be declined, and even in the case of a slightest doubt, the rule is to refer the dispute to arbitration. The Supreme Court has described this scrutiny as one “*through the eye of the needle*”.

10. On the facts pleaded by the Union, I am unable to discern an *ex facie* full and final settlement or accord and satisfaction so as to reject the petitioner’s claims at the pre-referral stage. The three measurement books are at best inconclusive. They referred to measurements of particular elements and quantities – that too, in different units of measurement – which would, at best, be inputs in determining the total amount payable by the Union to the petitioner. The addendum/corrigendum document also contains several entries and different figures, countersigned by the petitioner at least in two places, which do not correlate to each other. While I do not intend to suggest that a single document is required in all circumstances, what is clear from the documents produced by the Union in this case is that no unambiguous certificate of a final settlement has been placed on record. It is not possible to state conclusively that the petitioner has endorsed his consent to the final figure payable by the Union to him, or that the amount has been paid.

11. In these circumstances, the objection is rejected at this stage, leaving it open to the parties to take their respective cases before the learned arbitrator.

12. The petition is therefore allowed and the disputes between the parties are referred to arbitration under the aegis of Delhi International Arbitration Centre, Delhi High Court, Shershah Road, New Delhi-110503 [“DIAC”]. DIAC is requested to nominate an arbitrator from its panel.



The arbitration proceedings will be governed by the Rules of DIAC, including as to remuneration of the learned Arbitrator.

13. The learned Arbitrator is requested to furnish a declaration under Section 12 of the Act, prior to entering upon the reference.

14. The petition stands disposed of with the aforesaid directions.

PRATEEK JALAN, J

FEBRUARY 28, 2024

“Bhupi”/