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

+ **ARB.P. 1016/2024**

PNSC INFRASTRUCTURE PVT LTD

.....Petitioner

Through: Ms Konika Mitra, Adv. (through VC)

versus

PUBLIC WORKS DEPARTMENT (NTCD)

.....Respondent

Through: Ms Nitika Bhutani, Adv.

CORAM:

HON'BLE MR. JUSTICE JASMEET SINGH

ORDER

16.10.2024

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1. This is a petition filed under Section 11(6) of the Arbitration and Conciliation Act, 1996 seeking appointment of an Arbitrator for adjudication of disputes between the parties.
2. Pursuant to a tender, the respondent issued a Letter of Acceptance to the petitioner on 08.07.2021.
3. On 20.07.2021, the Letter to Proceed with the work was issued to the petitioner.
4. In accordance with Clause 3A of the GCC (General Conditions of Contract), the respondent put an immediate closure to the contract *vide* letter dated 30.05.2022.
5. Ms Bhutani, learned counsel for the respondent states that the petitioner was also informed earlier on 20.12.2021.
6. The petitioner disputed the letter for closure of work *vide* order dated 04.06.2022.



7. Clause 25 of the GCC contains arbitration clause, which reads as under:

“Clause 25 - Settlement of Disputes & Arbitration

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 or if the Engineer in Charge considers any act or decision of the contractor on any matter in connection with or arising out of the contract or carrying out of the work, to be unacceptable and is disputed, such party shall promptly within 15 days of the arising of the disputes request the Chief Engineer/CPM, or where there is no Chief Engineer/CPM, request the Additional Director General/Special Director General, who shall refer the disputes to Dispute Redressal Committee (DRC) within 15 days along with a list of disputes with amounts claimed if any in respect of each such dispute. The Dispute Redressal Committee (DRC) give its decision within a period of 60 days extendable by 30 days by consent of both the parties from the receipt of reference from CE/CPM/ADG/SDG. The constitution of Dispute Redressal Committee (DRC) shall be as indicated in Schedule 'F'. Provided that no party shall be represented before the Dispute Redressal Committee by an advocate/legal counsel etc.



The DRC will submit its decision to the concerned ADG/SDG for acceptance. ADG/ SDG in a time limit of 30 days from receipt of DRC decision will convey acceptance or other wise on the said decision .If the Dispute Redressal Committee (DRC) fails to give its decision within the aforesaid period or the ADG/SDG fails to give his decision in the aforesaid time limit or any party is dissatisfied with the decision of Dispute Redressal Committee (DRC)/ ADG/ SDG the neither party may within a period of 30 days from the receipt of the decision of Dispute Redressal Committee (DRC)/ ADG/ SDG or on expiry of aforesaid the time limits available to DRC/ ADG/SDG ,may give notice to the Chief Engineer/CPM, CPWD, in charge of the work or if there be no Chief Engineer/ CPM,, the Additional Director General /Special Director General concerned or if there be no Additional Director General/ Special Director General, the Director General, CPWD for appointment of arbitrator on prescribed proforma as per Appendix XVII under intimation to the other party.

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.

The CE/ADG/ SDG shall in such case appoint the sole arbitrator or one of the three arbitrators as the case may be within 30 days of receipt of such a request and refer such disputes to arbitration. Wherever the Arbitral Tribunal consists of three Arbitrators, the contractor shall appoint one arbitrator within 30 days of making request for arbitration or of receipt of request by Engineer-in-charge to CE/ADG/ SDG /DG for appointment of arbitrator, as the case may be, and two appointed arbitrators shall appoint the third arbitrator who shall act as the Presiding Arbitrator. In the event of

(a) A party fails to appoint the second Arbitrator, or

(b) The two appointed Arbitrators fail to appoint the Presiding Arbitrator, then the Director General, CPWD shall appoint the second or Presiding Arbitrator as the case may be.



(ii) Dispute or difference shall be referred for adjudication through arbitration by a Tribunal having sole arbitrator where claimed amount is Rs. 20 Crore or less. Where claimed Value is more than Rs. 20 Crore, Tribunal shall consist of three Arbitrators as above. The requirements of the Arbitration and Conciliation Act, 1996 (26 of 1996) and any further statutory modification or re-enactment thereof and the rules made there under and for the time being in force shall be applicable.

It is a term of this contract that the party invoking arbitration shall give a list of disputes with amounts claimed, if any, in respect of each such dispute along with the notice for appointment of arbitrator and giving reference to the decision of the ADG/SDG on the finding / recommendation of DRC.

It is also a term of this contract that member(s) of the Arbitration Tribunal shall be a Graduate Engineer with experience in handling public works engineering contracts, and further he shall have earlier worked at a level not lower than Chief Engineer/ equivalent (i.e. Joint Secretary level of Government of India). This shall be treated as a mandatory qualification to be appointed as arbitrator.

Parties, before or at the time of appointment of Arbitral Tribunal may agree in writing for fast track arbitration as per the Arbitration and Conciliation Act, 1996 (26 of 1996) as amended in 2015.

Subject to provision in the Arbitration and Conciliation Act, 1996 (26 of 1996) as amended in 2015 whereby the counter claims if any can be directly filed before the arbitrator without any requirement of reference by the appointing authority. 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 fees payable to arbitral



tribunal shall be as approved by DG, CPWD, OM issued vide no.2/2006/SE(TLC)/CSQ /137 dated 19-11-2019 (or its latest amendment as approved by DG, CPWD). This fee shall be shared equally by parties.

The place of arbitration shall be as mentioned in Schedule F. In case there is no mention of place of arbitration, the arbitral tribunal shall determine the place of arbitration.

The venue of the arbitration shall be such place as may be fixed by the Arbitral Tribunal in consultation with both the parties. Failing any such agreement, then the Arbitral Tribunal shall decide the venue.”

8. The petitioner sent legal notices dated 10.01.2023, 02.02.2023 and 07.03.2023 praying for appointment of Dispute Resolution Committee (DRC). Since there was no response, the petitioner sent letter dated 10.04.2023 for appointment of Arbitrator.

9. Since the disputes subsist, the present petition has been filed.

10. Ms Bhutani, learned counsel for the respondent states that she has no objection to appointment of an Arbitrator as long as all her objections including the fact that the contract was a ‘Non-Starter’ are kept open.

11. For the said reasons, the petition is allowed and the following directions are issued:-

i) Ms. Justice Mukta Gupta (Retd.) (Mob. No. 9650788600) 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’).

iii) The remuneration of the learned Arbitrator shall be in terms



of DIAC (Administrative Cost and Arbitrators' Fees) Rules, 2018.

iv) The learned Arbitrator is requested to furnish a declaration in terms of Section 12 of the Act prior to entering into the reference.

v) 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/counter-claims and merits of the dispute of either of the parties, including the objection that the contract was a 'Non-Starter' are left open for adjudication by the learned arbitrator.

vi) The parties shall approach the learned Arbitrator within two weeks from today.

JASMEET SINGH, J

OCTOBER 16, 2024

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Click here to check corrigendum, if any