



2024:DHC:6239



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

+ ARB.P. 1116/2024

SKYLINE ENGINEERING CONTRACTS
(INDIA) PVT LTD.

.....Petitioner

Through: Mr. Rupesh Gupta and Ms.
Kritika Tuteja, Advs.

versus

MMR SAHA INFRASTRUCTURE PVT LTDRespondent

Through: Mr. S.K. Singh, Adv.

+ ARB.P. 1117/2024

SKYLINE ENGINEERING CONTRACTS (INDIA)
PVT LTD

.....Petitioner

Through: Mr. Rupesh Gupta and Ms.
Kritika Tuteja, Advs.

versus

MMR SAHA INFRASTRUCTURE PVT LTDRespondent

Through: Mr. S.K. Singh, Adv.

CORAM:

HON'BLE MR. JUSTICE C. HARI SHANKAR

ORDER (ORAL)

16.08.2024

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1. These are two petitions under Section 11(6) of the Arbitration and Conciliation Act 1996¹, seeking reference of the dispute between the parties to arbitration.

2. The agreements, in context whereof the present disputes arise,

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¹ "the 1996 Act" hereinafter

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were executed between the petitioner and respondent in connection with construction of a residential and commercial tower. The petitioner was engaged by the respondent as a contractor.

3. Arb. P. 1116/2024 is in the context of an agreement dated 7 October 2014, for construction of commercial buildings and, whereas Arb. P. 1117/2024 is apropos agreement dated 31 December 2013, for construction of residential buildings.

4. The arbitration clause in both the agreements is identical and reads thus:

“98. Arbitration

Any difference, dispute, controversy or claim (Dispute) which may arise between the parties hereto out of or in relation to or in connection with this agreement, or the break termination, effect, validity, interpretation or application of this agreement or as to their rights, duties or liabilities hereunder other than a dispute for which provision is specifically made in this agreement, shall be settled by the parties by mutual negotiations and agreement. If, for any reason such dispute cannot be resolved amicably by the parties hereto within 60 calendar days of the Dispute being notified by one party to the other, the same shall be settled by way of arbitration proceedings by a sole arbitrator if both the parties give consent in writing to the mutually selected arbitrator within 30 days of either party giving notice to invoke the arbitration to the other party and failing which, the same shall be settled by way of arbitration proceeding by three arbitrators, one to be nominated by each of the Contractor and Project Developer and the third to be appointed by the two arbitrators so appointed. The arbitration proceedings shall be held in accordance with Arbitration and Conciliation Act, 1996, or any subsequent enactment or amendment thereto ("the Arbitration Act"). The decision of the arbitrators shall be final and binding upon the parties. The venue of the arbitration shall be Delhi, India. The language of the arbitration and the award shall be English.

Subject to the preceding clause, the parties agree to submit to the exclusive jurisdiction of the competent courts in Delhi, with regard to any question or matter arising out of this arbitration proceedings

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in pursuance hereto or arising here from.

The Contractor shall not, except with the consent in writing of the Project Developer and Project Manager, in any way delay the carrying out of the Work by reason of such matter, question or dispute being-referred to arbitration. On the contrary the Contractor shall proceed with the Work with all due diligence and shall, until the decision of the arbitrator is given, abide by the decision of the Project Manager. The award of the arbitrator shall not relieve the Contractor of his obligations to adhere strictly to the Project Developer's representative / Project Manager's instructions with regard to the actual carrying out of the Work, save and except as the Award may specifically affect such instructions.”

5. Dispute having arisen between the parties, the petitioner sent notices seeking an amicable resolution of the dispute to the respondent and, on the expiry of the prescribed period as per the arbitration agreement, invoked arbitration by notice dated 21 March 2024.
6. On the parties thereby not being able to arrive at any consensus regarding arbitration, the petitioner has moved the present petitions before this Court under Section 11(6) of the 1996 Act.
7. Mr. S.K. Singh, learned Counsel for the respondent, has no objection to the dispute being referred to arbitration but prays that all rights and contentions of the respondent, including the preliminary objections to the arbitrability of the dispute, if any, may be left open to be urged in the arbitral proceedings.
8. As per learned Counsel, the total claim of the petitioner against the respondent in these two cases would be in region of ₹ 50 crores.
9. Accordingly, this Court requests Hon'ble Mr. Justice Sanjay

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Kishan Kaul (Tel. 9818000370), a learned retired Judge of the Supreme Court of India, to arbitrate on the disputes between the parties.

10. The fees of the arbitrator shall be settled by the arbitrator in consultation with the parties.

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

12. The Court has not expressed any opinion either on merits or regarding arbitrability or any other preliminary objection which the respondent may seek to urge. All questions of fact and law shall remain open to be urged in the arbitral proceedings.

13. Both the disputes stand referred to the learned Arbitrator for decision. The learned Arbitrator would decide both these disputes independently.

14. Both the petitions stand disposed of in the aforesaid terms.

C. HARI SHANKAR, J.

AUGUST 16, 2024

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Click here to check corrigendum, if any

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