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

+ **ARB.P. 1203/2023**

M/S.TEMPCON ENGINEERS

..... Petitioner

Through: Ms. Seema Singh, Mr. Dayanand
Sharma & Mr. Jagdish Singh,
Advocates.

versus

UNION OF INDIA

..... Respondent

Through: Mr. Aakash Verma, SPC with Mr.
Abhishek Khanna, GP for UOI.

CORAM:

HON'BLE MR. JUSTICE PRATEEK JALAN

ORDER

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16.01.2024

1. The petitioner seeks appointment of an arbitrator to adjudicate disputes between the parties under a contract agreement which was entered into pursuant to a tender and letter of acceptance dated 03.10.2018. The agreement contains a dispute resolution clause which provides for reference of disputes to the Superintending Engineer, Central Public Works Department ["CPWD"], with appeals to the Chief Engineer and the Dispute Redressal Committee.

2. In the event of failure to arrive at a mutually acceptable decision, the matters have to be referred to the arbitration of an arbitrator to be appointed by the Chief Engineer, CPWD.

3. Certain disputes arose between the parties, which were referred to the Chief Engineer by a communication of the petitioner 12.11.2021. Those



disputes are pending arbitration before Mr. Akhilesh Kumar. While the proceedings remain pending before him, the petitioner has, by a letter dated 08.08.2023 to the Additional Director General, CPWD stated that seven further claims were inadvertently left out from the scope of adjudication by the arbitral tribunal and sought reference thereof. After a reminder dated 11.09.2023, the respondent has stated in a letter dated 11.10.2023, that the reference cannot be entertained at this stage. While saying so, the respondent has drawn reference to paragraph 7(i) of the CPWD Works Manual, 2022 which deals with discovery of documents.

4. Mr. Aakash Verma, learned counsel for the respondent, accepts that this reference to discovery of documents was misconceived, but submits that the additional claims are also required first to be referred to the pre-arbitration mechanism provided in the contract. He submits that in the event resolution is not possible within a fixed time frame, the matters may be referred to arbitration of the same learned arbitrator, who is already in *seisin* of disputes between the parties.

5. Ms. Seema Singh, learned counsel for the petitioner, is also agreeable to this suggestion.

6. In view of the above, the petition is disposed of, with the consent of learned counsel for the parties with the following directions:

- a. The petitioner will submit documents in support of the additional claims raised in its letter dated 08.08.2023 to the Additional Director General, CPWD within three days from today.
- b. The respondent will initiate the pre-arbitration dispute resolution mechanism upon notice to the petitioner, and make an attempt to resolve the disputes within two months from today.



- c. In the event the disputes are not resolved within two months from today, the additional claims may be lodged before Mr. Akhilesh Kumar [*Flat No. 3111, OSIMO Tower, Mahagun Mezzaria, Sector 78, Noida, U.P. 201304, Mobile No.:- 9811420440, Email Id:- cr.akhilesh@yahoo.co.in*], who is already hearing disputes with regard to the original claims of the petitioner.
7. It is made clear that this Court has not finally adjudicated upon the maintainability or the merits of the claims sought to be raised by the petition or claims and counter claims of the parties, will be subject to a decision of the learned arbitrator.
8. The petition stands disposed of with these directions.

PRATEEK JALAN, J

JANUARY 16, 2024

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