



2024:DHC:9250



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

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Date of Decision : 25.11.2024+ **ARB.P. 1212/2024****M/S KAMAL BUILDERS THROUGH ITS PROPRIETOR SHRI
KAMAL GUPTA**

.....Petitioner

Through: Mr. S.S. Pandey, Mr. H.S. Tiwari,
Mr. Nishant Pandey, Ms. Somya
Pandey, Mr. Roshan Kumar, Advs.

versus

M/S K K SPUN INDIA LIMITED

.....Respondent

Through: Mr. Abhishek Gupta, Adv.

CORAM:**HON'BLE MR. JUSTICE SACHIN DATTA****SACHIN DATTA, J. (Oral)**

1. The present petition under Section 11(6) of the Arbitration and Conciliation Act, 1996 (hereinafter '*the A&C Act*') seeks constitution of an Arbitral Tribunal to adjudicate the disputes between the parties.
2. The disputes between the parties have arisen in the context of an Agreement (Sub-Contract) for execution of the work of 'Upgradation of Infrastructure i.e. cement concrete road network, water supply system, waste water, conveyance system, storm water drainage system, development of water works and all other works contingent thereto in industrial area Sector-24, Faridabad (Including Five Year maintenance of defect liability period free of cost)'.
3. Admittedly, the Contract Agreement dated 05.12.2021, entered into between the parties, contains an arbitration clause as under:-



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“30. That in case of any dispute pertaining to this Agreement and/or subject matter of the contract or any matter connected with or incidental thereto, the same shall be referred to arbitration as per provisions of the Arbitration and Reconciliation Act, 1996. The venue of arbitration shall be NCT Delhi and language of arbitration shall be Hindi/ English. Further in case of any dispute(s) by and between the parties to this Agreement, which cannot be resolved through Arbitration, shall be subject to jurisdiction of Courts at Delhi.”

4. Disputes having arisen between the parties, a notice of invocation under Section 21 of the A&C Act was sent by the petitioner to the respondent on 05.02.2024. The same was duly responded to by the respondent wherein the claims sought to be raised by the petitioner were strongly refuted by the respondent. However, the parties could not mutually agree on the constitution of an Arbitral Tribunal.

5. Learned counsel for the respondent has again strongly refuted the claims sought to be raised by the petitioner. However, he does not dispute the existence of the Arbitration Agreement between the parties and accedes to the appointment of an independent Sole Arbitrator to adjudicate the disputes between the parties.

6. In view of the aforesaid, and in view of the judgement of the Supreme Court in *Interplay between Arbitration Agreements under the Arbitration & Conciliation Act, 1996 & the Indian Stamp Act, 1899, In re*, 2023 SCC OnLine SC 1666 and *SBI General Insurance Co. Ltd. v. Krish Spinning* 2024 SCC OnLine 1754, there is no impediment to appointing an independent Sole Arbitrator to adjudicate the disputes between the parties.

7. Accordingly, Mr. Justice (Retd.) Vipin Sanghi, Former Chief Justice, Uttarakhand High Court (Mob. No.: +91 9871300037) is appointed as the Sole Arbitrator to adjudicate the disputes between the parties.



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8. The respondents shall be entitled to raise preliminary objections as regards jurisdiction/arbitrability, which shall be decided by the learned arbitrator, in accordance with law.
9. The learned Sole Arbitrator may proceed with the arbitration proceedings subject to furnishing to the parties, the requisite disclosures as required under Section 12 of the A&C Act.
10. The learned Sole Arbitrator shall be entitled to fee in accordance with Fourth Schedule to the A&C Act; or as may otherwise be agreed to between the parties and the learned Sole Arbitrator.
11. All rights and contentions of the parties in relation to the claims/counter-claims are kept open, to be decided by the learned Arbitrator on their merits, in accordance with law.
12. Needless to say, nothing in this order shall be construed as an expression of opinion of this Court on the merits of the case.
13. The present petition is allowed in the above terms.

SACHIN DATTA, J

NOVEMBER 25, 2024/UK