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IN THE HIGH COURT OF DELHI AT NEW DELHI

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ARB.P. 1297/2023

M/S SMAT FORMS & ANR.

..... Petitioners

Through: Mr.Durgesh Gupta and Mr.Netrapal,
Singh, advts.

versus

DIRECTORATE OF SOCIAL WELFARE AND ANR.

..... Respondents

Through: Mr.Parth Goyal, Adv. for Mr.Jawahar
Raja, ASC (C), GNCTD with
Mr.Jorawar Singh, Superintendent
and Mr.Naveen Kumar, Sr.Asstt, SW
Dept. GNCTD.

CORAM:

HON'BLE MR. JUSTICE DINESH KUMAR SHARMA

ORDER

21.02.2024

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I.A. 24430/2023 (exemption)

Exemption is allowed subject to all just exceptions.

Application stands disposed of.

I.A. 24431/2023 (delay)

The present application has been filed for condonation of a delay of 11 days in re-filing the present petition.

For the reasons mentioned in the application, the delay of 11 days in re-filing the petition is condoned.

The application stands disposed of.

ARB.P. 1297/2023

The present petition has been filed under Section 11 (6) of the



Arbitration and Conciliation Act, 1996, (herein referred to as “*the A&C Act*”) seeking the appointment of a sole arbitrator for adjudication of dispute between the parties.

The Respondent no.2/Govt. of NCT of Delhi placed an order dated 08.08.2019 upon the petitioner on GeM for printing of letterheads on Maplitho paper. The petitioner pursuant to this purchased the whole material for the printing of letterheads. The petitioners submit that despite formal orders under GeM placed on the petitioners and after approval of samples, the respondents rejected the quality of the paper. However, subsequently, the petitioners were orally asked to start printing the letterheads on handmade paper without waiting for a formal order to be made on GAD-approved rates. The petitioners state that they purchased the whole material for Rs.5.50 lakh as per verbal approval only after assurance of respondent no. 2.

Learned counsel submits that thereafter the objection was raised that the petitioners cannot take referral dates and it requires a fresh tender altogether. The petitioners state that they were assured that even if the tender is awarded fresh, his material will be taken.

Subsequently, a fresh tender was floated for the printing of letterheads on handmade paper of 140 GSM wherein the petitioners were successful in the bids being L1 bidder, and the tender dated 19.09.2019 was awarded to the petitioners. This tender contains an arbitration clause. The work was awarded vide letter dated 27.09.2019 and it was accepted vide communication dated 05.10.2019.

Subsequent developments led to a dispute between the parties. Initially, the petitioner filed a W.P.(C) 11555/2019. However, taking into



account that there is an arbitration clause, the writ petition was dismissed as withdrawn with the liberty to seek appropriate remedy under the A&C Act.

Learned counsel for the petitioner submits that thereafter, the petition under Section 9 of the A&C Act filed by the petitioner was dismissed as withdrawn, as during the pendency it was submitted on behalf of the respondent that an arbitrator has already been appointed. However, learned counsel submits that till date no arbitrator has been appointed. The claim amount is stated to be around Rs.20 lakhs.

Mr.Parth Goyal, learned counsel for the respondent states on instructions that a sole arbitrator may be appointed for adjudication of the dispute. Learned counsel for the respondent submits that though an arbitrator was appointed, however, the arbitration could never take off and therefore they have no objection if an independent sole arbitrator is appointed under the aegis of DIAC.

With the consent of the parties, the present petition is disposed of with the following directions:

- i) The disputes between the parties under the said agreement are referred to the arbitral tribunal.
- ii) Mr.Lalit Luthra, Advocate (Mob. No.9910645959) is appointed as an Arbitrator to adjudicate the disputes between the parties.
- iii) 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'). The remuneration of the learned Arbitrator shall be in terms of fee rules of the DIAC schedule or as the parties may agree.
- iv) The learned Arbitrator is requested to furnish a declaration in terms of



Section 12 of the A&C Act before 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 claims, any other preliminary objection, as well as claims on merits of the dispute of either of the parties, are left open for adjudication by the learned arbitrator.

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

DINESH KUMAR SHARMA, J

FEBRUARY 21, 2024

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