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IN THE HIGH COURT OF DELHI AT NEW DELHI

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ARB.P. 1304/2023

SHRI GAJANAND ENTERPRISES

..... Petitioner

Through: Ms. Seema Singh, Adv.

versus

UNION OF INDIA & ORS.

..... Respondent

Through: None

CORAM:

HON'BLE MR. JUSTICE JASMEET SINGH

ORDER

02.02.2024

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1. This is a petition seeking appointment of an Arbitrator for adjudication of disputes between the parties pertaining to the work order dated 12.02.2021.
2. The arbitration Clause is at Clause 70 of the General Conditions of Contract (IAFW 2249) and reads as under:-

“70. Arbitration.- All disputes, between the parties to the Contract (other than those for which the decision of the C.W.E. or any other person is by the Contract expressed to be final and binding) shall, after written notice by either party to the Contract to the other of them, be referred to the sole arbitration of an Engineer officer to be appointed by the authority mentioned in the tender documents.

Unless both parties agree in writing such reference shall not take place until after the completion or alleged completion of the Work or termination or determination of the Contract under Condition Nos. 55, 56 and 57 hereof.



Provided that in the event of abandonment of the Works or cancellation of the Contract under Condition Nos. 52, 53 or 54 hereof, such reference shall not take place until alternative arrangements have been finalized by the Government to get the Works completed by or through any other Contractor or Contractors or Agency or Agencies.

Provided always that commencement or continuance of any arbitration proceeding hereunder or otherwise shall not in any manner militate against the Government's right of recovery from the contractor as provided in Condition 67 hereof.

If the Arbitrator so appointed resigns his appointment or vacates his office or is unable or unwilling to act due to any reason whatsoever, the authority appointing him may appoint a new Arbitrator to act in his place.

The Arbitrator shall be deemed to have entered on the reference on the date he issues notice to both the parties, asking them to submit to him their statement of the case and pleadings in defence.

The Arbitrator may proceed with the arbitration, ex parte, if either party, inspite of a notice from the Arbitrator fails to take part in the proceedings.

The Arbitrator may, from time to time with the consent of the parties, enlarge, the time upto but not exceeding one year from the date of his entering on the reference, for making and publishing the award.

The Arbitrator shall give his award within a period of six months from the date of his entering on the reference or within the extended time as the case may be on all matters referred to him and shall indicate his findings, along with sums awarded, separately on each individual item of dispute.



The venue of Arbitration shall be such place or places as may be fixed by the Arbitrator in his sole discretion.

The award of the Arbitrator shall be final and binding on both parties to the Contract.”

3. Since there were certain disputes with regard to the payments, the petitioner invoked arbitration Clause *vide* notice dated 14.07.2023.
4. The petitioner issued conciliation notice on 23.08.2022, which was replied to by the respondent on 20.10.2022.
5. Since the disputes were not settled, the petitioner invoked the arbitration Clause on 14.07.2023.
6. On the last date of hearing, Mr. Sidharth Khatana, learned counsel appeared for the respondent, accepted notice and sought time to file a response. However, there is no response filed and there is no appearance on behalf of the respondent either.
7. For the said reasons, I am inclined to allow the petition. The following directions are issued:-
 - i) Mr. Rakesh Kumar Dudeja, Adv. (Mob. No. 9810147798) 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’). The remuneration of the learned Arbitrator shall be in terms of the Fourth Schedule of the Arbitration & Conciliation Act, 1996.
 - iii) The learned Arbitrator is requested to furnish a declaration



in terms of Section 12 of the Act prior to entering into the reference.

- iv) 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 on merits of the dispute of either of the parties, are left open for adjudication by the learned arbitrator.
 - v) The parties shall approach the learned Arbitrator within two weeks from today.
8. The petition is allowed and disposed of in the aforesaid terms.

JASMEET SINGH, J

FEBRUARY 2, 2024 / (MS)

Click here to check corrigendum, if any