



2024:DHC:9066



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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Date of Decision: 22.11.2024

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ARB.P. 1254/2024

MR ASHUTOSH HAJELA

.....Petitioner

Through:

Mr. Avinash K. Trivedi, Mr. Anurag
Koushik and Mr. Rahul Aggarwal,
Advs.

versus

DELHI TOURISM AND TRANSPORTATION DEVELOPMENT
CORPORATION LTD

.....Respondent

Through: Ms. Saloni Mahajan, 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 referred as 'the A&C Act') seeks appointment of a Sole Arbitrator to adjudicate the disputes between the parties.

2. The Respondent issued a tender for "*Upgradation and Face lifting of 11 Class rooms in existing block, construction of canopy and stage shed at Rao Tula Ram, Sarvodaya Vidyalaya (School ID: 1822003), Surhera, New Delhi. (SH: Civil and Electrical Installation works)*".

Pursuant to the tender process, the respondent declared the petitioner as the successful bidder and issued a letter of acceptance bearing no.



DTTDC/Engg/EE(JP)/Surhera/537 dated 08.06.2022. The petitioner provided a performance guarantee of ₹3,91,434 as required and entered into agreement bearing no. 04/EE(JP)/DTTDC/Engg./2022-23 for the project, valued at ₹1,30,47,794. The stipulated timeline for the work was from 18.06.2022 to 14.12.2022.

3. The relevant conditions of contract contain an arbitration clause as under: -

*“Settlement of
Disputes &
Arbitration*

Clause 25

Except where otherwise provided in the contract, all questions and disputes relating to the meaning of the specifications, design, drawings and instructions here-in before mentioned and as to the quality of workmanship or materials used on the work or as to any other question, claim, right, matter or thing whatsoever in any way arising out of or relating to the contract, designs, drawings, specifications, estimates, instructions, orders or these conditions or otherwise concerning the works or the execution or failure to execute the same whether arising during the progress of the work or after the cancellation, termination, completion or abandonment thereof shall be dealt with as mentioned hereinafter:

(i) If the contractor considers any work demanded of him to be outside the requirements of the contract, or disputes any drawings, record or decision given in writing by the Engineer-in-Charge or if the Engineer in Charge considers any act or decision of the contractor on any matter in connection with or arising out of the contract or carrying out of the work, to be unacceptable and is disputed, such party shall promptly within 15 days of the arising of the disputes request the Chief Engineer/CPM, or where there is no Chief Engineer/CPM, request the Additional Director General/Special Director General, who shall refer the disputes to Dispute Redressal Committee (DRC) within 15 days along with a list of disputed with amounts claimed if any in respect of each such dispute. The Dispute Redressal Committee (DRC) give its decision within a period of 60 days extendable by 30 days by consent of both the parties from the receipt of reference from CE/CPM/ADG/SDG. The constitution of Dispute Redressal Committee (DRC) shall be as indicated in Schedule



'F'. Provided that no party shall be represented before the Dispute Redressal Committee by an advocate/legal Counsel etc.

The DRC will submit its decision to the concerned ADG/SDG for acceptance. ADG/SDG in a time limit of 30 days from receipt of DRC decision will convey acceptance or other wise on the said decision. If the Dispute Redressal Committee (DRC) fails to give its decision in the aforesaid time limit or any party is dissatisfied with the decision of Dispute Redressal Committee (DRC)/ADG/SDG then either party may within a period of 30 days from the receipt of the decision of Dispute Redressal Committee (DRC)/ADG/SDG or on expiry of aforesaid the time limits available to DRC/ADG/SDG, may give notice to the Chief Engineer/CPM, CPWD, in charge of the work or if there be no Chief Engineer/CPM, the Additional Director General/Special Director General concerned or if there be no Additional Director General/Special Director General, the Director General, CPWD for appointment of arbitrator on prescribed proforma as per Appendix XVII under intimation to the other party.

It is a term of contract that each party invoking arbitration must exhaust the aforesaid mechanism of settlement of claims/disputes prior to invoking arbitration.

The CE/ADG/SDG shall in such case appoint the sole arbitrator or one of the three arbitrators as the case may be within 30 days of receipt of such a request and refer such disputes to arbitration. Wherever the Arbitral Tribunal consists of three Arbitrator, the contractor shall appoint one arbitrator within 30 days of making request for arbitration or of receipt of request by Engineer-in-charge to CE/ADG/SDG/ DG for appointment of arbitrator, as the case may be, and two appointed arbitrators shall appoint the third arbitrator who shall act as the Presiding Arbitrator. In the event of

(a) A party fails to appoint the second Arbitrator, or

(b) The two appointed Arbitrators fail to appoint the Presiding Arbitrator, then the Director General, CPWD shall appoint the second or Presiding Arbitrator as the case may be.

(ii) Dispute or difference shall be referred to adjudication through arbitration by a Tribunal having sole arbitrator where claimed amount is Rs.20 Crore or less. Where claimed Value is more than Rs. 20 Crore, Tribunal shall consist of three Arbitrators as above. The requirements of the Arbitration and Conciliation Act, 1996 (26 of 1996) and any further statutory modification or re-enactment thereof



and the rules made there under and for the time being in force shall be applicable.

It is a term of this contract that the party invoking arbitration shall give a list of disputes with amounts claimed, if any, in respect of each such dispute along with the notice for appointment of arbitrator and giving reference to the decision of the ADG/ SDG on the finding / recommendation of DRC.

It is also a term of this contract that member(s) of the Arbitration Tribunal shall be a Graduate Engineer with experience in handling public works engineering contracts, and further he shall have earlier worked at a level not lower than Chief Engineer / equivalent (i.e. Joint Secretary level of Government of India). This shall be treated as a mandatory qualification to be appointed as arbitrator.

Parties, before or at the time of appointment of Arbitral Tribunal may agree in writing for last tract arbitration as per the Arbitration and Conciliation Act, 1996 (26 of 1996) as amended in 2015.

Subject to provision in the Arbitration and Conciliation Act, 1996 (26 of 1996) as amended in 2015 whereby the counter claims if any can be directly filed before the arbitrator without any requirement of reference by the appointing authority. The arbitrator shall adjudicate on only such disputes as are referred to him by the appointing authority and give separate award against each dispute and claim referred to him and in all cases where the total amount of the claims by any party exceeds Rs.1,00,000/-, the arbitrator shall give reasons for the award.

It is also a term of the contract that fees payable to arbitral tribunal shall be as approved by DG, CPWD, OM issued vide no.2/2006/SE(TLC)/CSQ/137 dated 19-11-2019 (or its latest amendment as approved by DG, CPWD). This fee shall be shared equally by parties.

The place of arbitration shall be as mentioned in Schedule F. In case there is no mention of place of arbitration, the arbitral tribunal shall determine the place of arbitration.

The venue of the arbitration shall be such place as may be fixed by the Arbitral Tribunal in consultation with both the parties. Failing any such agreement, then the Arbitral Tribunal shall decide the venue.”



4. The disputes between the parties arose when the petitioner failed to release the petitioner's dues, including pending bills, despite repeated oral and written representations.
5. Consequently, the petitioner sent a demand notice dated 30.03.2024 addressed to the concerned Executive Engineer and other officials of the respondent, thereby invoking Clause 25 of the GCC and raising eight claims against the respondent.
6. The respondent's Executive Engineer replied on 15.04.2024, admitting liability for the payment of the 5th RA Bill. However, the reply mentioned defects in the final bill submitted by the petitioner on 21.02.2024, and denied some of the claims of the petitioner.
7. In light of the respondent's failure to resolve the matter, the petitioner, on 13.05.2024, addressed a letter to the Managing Director and Chief Project Manager of the respondent department again invoking Clause 25 of the GCC and requesting the department to take appropriate steps.
8. As the respondent failed to respond, the petitioner issued a notice dated 15.06.2024, along with the claims sought to be raised by it, requesting the Managing Director to adjudicate the matter in the capacity of a conciliator. However, the respondent did not reply.
9. In the above background, the petitioner has filed the present petition, seeking appointment of a Sole Arbitrator to adjudicate the disputes between the parties.
10. Learned counsel for the respondent while not disputing the existence of the arbitration agreement opposes the present petition on the ground that the claims are premature inasmuch as the final bill, prepared by the petitioner has been returned back under objections and is yet to be re-



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submitted. It is pointed out that the claims sought to be raised are part of the final bill. As such, the respondent is yet to take a call on the amounts claimed under the final bills.

11. The aforesaid objection of learned counsel for the respondent does not constitute an impediment to constituting an arbitral tribunal to adjudicate the disputes between the parties. The grievance of the petitioner is that its genuine claims/monetary entitlements are not being paid. Despite the petitioner pursuing the matter at various levels, the dispute/s have remained unresolved for a protracted period. In this background, it is untenable for the respondent to deny arbitration on the premise that the final bill is yet to be approved by the respondent. In any event, as held in ***SBI General Insurance Co. Ltd. v. Krish Spinning***, 2024 INSC 532 and ***Interplay between Arbitration Agreements under the Arbitration & Conciliation Act, 1996 & the Indian Stamp Act, 1899, In re***, 2023 SCC OnLine SC 1666, the scope of inquiry in the present petition is confined to ascertaining the *prima facie* existence of the arbitration agreement.

12. In the present case, the existence of the arbitration agreement is not denied.

13. The objections sought to be raised by learned counsel for the respondent as regards maintainability/arbitrability of the claims sought to be raised shall necessarily be considered by the arbitrator in accordance with law.

14. Accordingly, Mr. Raman Yadav, Advocate (Mob. No. +91 9999345388) is appointed as the Sole Arbitrator to adjudicate the disputes between the parties.



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15. The learned Sole Arbitrator may proceed with the arbitration proceedings subject to furnishing to the parties requisite disclosure as required under Section 12 of the A&C Act.

16. At request of the petitioner, the arbitration shall take place under the aegis of and under the rules of the Delhi International Arbitration Centre (DIAC). It is directed accordingly.

17. All rights and contentions of the parties in relation to the claims/counter claims are kept open, to be decided by the learned Sole Arbitrator on their merits, in accordance with law.

18. Needless to say, nothing in this order shall be construed as an expression of opinion of this court on the merits of the case.

19. The present petition stands disposed of in the above terms.

SACHIN DATTA, J

NOVEMBER 22, 2024/cl