



2024:DHC:9444



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

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Date of Decision : 06.12.2024+ **ARB.P. 1382/2024**

M/S REINFORCED EARTH INDIA PVT LTDPetitioner
Through: Mr. Gurinder Pal Singh and Ms.
Maryam Beg, Advocates.
versus

RK INFRACORP PRIVATE LIMITED & ANR.Respondents
Through: Mr. Brijesh Kumar Goel, Mr. Rajeev
Kumar and Mr. Sajal Goel, Advocate
for R-1 (through VC)

CORAM:
HON'BLE MR. JUSTICE SACHIN DATTA

SACHIN DATTA, J. (Oral)

1. The present petition under Section 11(5) of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as '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 backdrop of work relating to construction of melli yard works including earthwork in cutting, filling, development of drainage system, sloe stabilization, retaining structures, reinforced soil wall system, construction of bridge no.10 on pile foundation, bridge no.11 and other ancillary works between 26.570 km to 27.540 km in connection with construction of Sivok-Rangpo New BG Railway Line Project which was awarded by Ircn International Limited to the respondent no.1.



2024:DHC:9444



3. In pursuance thereto, the respondent no.1 sub-contracted to the petitioner the execution of the part of the works vide sub-contract agreement dated 27.11.2021.
4. Thereafter, on 06.05.2022, the aforesaid sub-contract agreement was partially amended.
5. While the petitioner continued to perform its part of the obligations under the sub-contract, the respondent no.1 assigned the responsibility of releasing payments to the petitioner under the sub-contract agreement dated 27.11.2021 and its subsequent amendment dated 06.05.2022 to the respondent no.2. A tripartite agreement was accordingly executed on 06.02.2023 between the petitioner, the respondent no.1 and the respondent no.2.
6. According to the petitioner, in terms thereof, both the respondent no.1 and the respondent no.2 are jointly and severally liable for release of all outstanding payments to the petitioner.
7. Disputes between the parties have arisen on account of alleged non-payment of the petitioner's outstanding dues.
8. Consequently, the petitioner invoked the arbitration clause contained in the tripartite agreement for the purpose of adjudication of disputes between the parties vide invocation notice dated 24.06.2024.
9. Admittedly, the tripartite agreement contains an arbitration clause as under :-

“8. The parties, i.e., RKIPL, Suryodaya and REIPL hereto shall make every reasonable effort to settle amicably between themselves any dispute or difference arising out of this Tripartite Agreement within a reasonable period of 30 days. In the event they are being unable to settle such dispute/s the same shall be referred to arbitration in accordance with the provisions of the Arbitration and Conciliation Act, 1996 to be referred to



the Sole Arbitrator. The jurisdiction shall be of New Delhi Courts only. The venue of Arbitration shall be Hyderabad and New Delhi on a rotational basis, the first venue starting from Delhi. The Award shall be final and binding on all the parties.”

10. Learned counsel for the respondent no.1 does not dispute the existence of the arbitration agreement and accedes to the appointment of a sole arbitrator by this Court to adjudicate the disputes between the parties.

11. None appears for the respondent no.2. However, it is pointed out by the learned counsel for the petitioner and the respondent no.1 that the respondent no.2 has participated in mediation proceedings pursuant to initial order dated 12.11.2024 passed by this Court.

12. Even though the mediation has failed, no reply has been filed on behalf of the respondent no.2 opposing the prayer/s sought in the present petition.

13. In any event, since the existence of the arbitration agreement is evident from the perusal of the relevant agreement which is placed on record, there is no impediment to constituting an arbitral tribunal to adjudicate the disputes between the parties in terms of judgments of Supreme Court in ***In Re: Interplay between Arbitration Agreement under the Arbitration and Conciliation Act, 1996 and the Indian Stamp Act, 1899*** In re, 2023 SCC OnLine SC 1666, and ***SBI General Insurance Co. Ltd. v. Krish Spinning*** 2024 SCC OnLine SC 1754.

14. Accordingly, Mr. Subhash Goyal, Retired District and Sessions Judge, Haryana (Mobile-8813888900) is appointed as the Sole Arbitrator to adjudicate the disputes between the parties.

15. The respondents shall be entitled to take appropriate objections as



2024:DHC:9444



regards jurisdiction/arbitrability, if any, before the learned Sole Arbitrator, which shall be decided by the learned Sole Arbitrator on merits and in accordance with law.

16. The respondents shall raise counter-claims which shall be dealt with and adjudicated by the learned Sole Arbitrator, in accordance with law.

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

18. 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.

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

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

SACHIN DATTA, J

DECEMBER 6, 2024/r