



2024:DHC:9994



\$~14

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

%

Date of Decision: 20.12.2024+ **ARB.P. 1393/2024**, I.A. 38912/2024

M S AISHWARYA LAKSHMI CONSTRUCTION.....Petitioner

Through: Mr. Raghu Vashisht and Ms. Aashi
Jain, Advs.

versus

M S EMPATHY INFRA AND ENGINEERING PVT. LTD.

.....Respondent

Through: None.

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

1. The present petition has been filed under section 11(6) of the Arbitration and Conciliation Act, 1996 (hereinafter referred as '*the A&C Act*') seeking appointment of a sole arbitrator to adjudicate the disputes between the parties.
2. In February, 2021, the respondent was awarded a tender for the construction and development of 603 Houses in Lake View Township at Vidyanagar, Bellary, Karnataka. (hereinafter referred as '*the project site*') by JSW Realty & Infrastructure Private Limited.
3. The petitioner and M/S RAMK Projects executed a Joint Venture Agreement dated 15.04.2021, in terms of which the parties had formed a joint venture called "RAMK-ALC (JV).
4. Disputes between the parties have arisen in the context of a Letter of Award dated 07.05.2021(hereinafter referred as '*LoA*'), issued to M/s



2024:DHC:9994



RAMK-ALC (JV). As per the LoA, the petitioner and its joint venture firm M/S RAMK Projects were sub-contracted by the respondent for the construction of 57 houses in Cluster-V12 at the project site for a contract price of Rs.7,10,01,000/-. The work was stipulated to commence on 01.05.2021 and be completed in stages within a period of 15 months from the effective date.

5. The RAMK-ALC (JV) was mutually terminated by the parties *vide* Termination Agreement dated 07.09.2021. It was agreed therein that no claim whatsoever arising out the LoA shall be raised by M/S RAMK project or on their behalf. The same is stated to be communicated to the respondent *vide* an email dated 25.09.2021.

6. Admittedly, the arbitration clause contained in the LoA is in the following terms:

18. Arbitration & Applicable Law:

“Any dispute arising out of or in connection with this contract, including any question regarding its existence, validity or termination, shall be referred to and finally resolved by arbitration in accordance with the Arbitration Rules of the Delhi International Arbitration Centre ("DIAC Rules"), which rules are deemed to be incorporated by reference in this clause.

22. Jurisdiction

Any dispute related to this contract shall be dealt within Delhi Jurisdiction only.”

7. Disputes between the parties have arisen on account of the alleged failure of the respondent to release the balance amounts for the work executed and completed by the petitioner at the project site.

8. It is stated that the respondent had assured and warranted release of payments to the petitioner at the end/completion of every stage of the project. The petitioner raised invoices as and when stage wise construction



2024:DHC:9994



was completed in the said project. However, the respondent despite several reminders and communications failed to release the outstanding payments.

9. It is further stated that in a meeting dated 19.05.2021, the disputes pertaining to payment of the work done by the petitioner at the project site were negotiated and settled. The respondent company had agreed to pay an amount of Rs. 41,68,655/- towards full and final settlement.

10. However, it is alleged that the respondent after a delay of 75 days on 29.11.2021 released a part payment of Rs. 11,78,783/- to the petitioner and thereafter, pursuant to several reminders and communications, in another meeting dated 19.05.2022 assured to pay the balance amount of Rs. 29,89,872/-. However, the respondent failed to pay the requisite outstanding balance.

11. Since the disputes between the parties persisted, the petitioner as per clause 18 of the LoA issued notice dated 10.01.2024 for invocation of arbitration. However, the respondent again failed to respond.

12. In the above circumstances, the petitioner has approached this Court, through the present petition, seeking the appointment of a sole arbitrator to adjudicate the dispute.

13. In the present proceedings, notice was issued by the Court on 10.09.2024, with a liberty to file reply, if the respondent wishes to resist the appointment of an arbitrator. An affidavit of service filed on behalf of the petitioner on 01.10.2024 states that the petitioner has taken the requisite steps to serve the respondent at its known addresses. The communication/s sent to the said address/es via speed post were returned with the notations, *"Item Returned, Insufficient Address"* and *"not delivered, addressee left without instructions"* whereas the communications delivered via dasti order



2024:DHC:9994



on behalf of the petitioner remained unserved since the respondent company has left the address.

14. As per affidavit of service dated 27.09.2024, it is stated that the respondent has also been served *via* whatsapp at +91-8920721651. However, the emails sent at info@eiepl.com, rk@eiepl.com and eieplgroup@eiepl.com bounced back.

15. Section 3 of the A&C Act contemplates that a written communication is deemed to have been received if it is sent to the addressee's last known place of business or mailing address by any means which provides a record of the attempt to deliver it. In the present case, the petitioner has made numerous attempts to effect service on the respondent and has thereby discharged its onus to effect service on the respondent.

16. In the circumstances, the present petition is taken up for hearing and disposal, despite no appearance on behalf of the respondent.

17. Since the existence of the arbitration agreement is evident from a perusal of the contract, there is no impediment to constituting an arbitral tribunal for adjudicating the disputes between the parties, as mandated in terms of the judgments of the Supreme Court 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.

18. Accordingly, the present petition is disposed of with a direction to the Delhi International Arbitration Centre (DIAC) to appoint a sole arbitrator to adjudicate the disputes between the parties. As contemplated in the agreement between the parties, the arbitration shall take place under the aegis of, and as per the rules of the DIAC.



2024:DHC:9994



19. 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.
20. 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.
21. Needless to say, nothing in this order shall be construed as an expression of opinion of this Court on the merits of the case.
22. The present petition stands disposed of in the above terms.

SACHIN DATTA, J

DECEMBER 20, 2024/sl