



2024:DHC:9896



\$~9

*

IN THE HIGH COURT OF DELHI AT NEW DELHI

%

Date of Decision: 19.12.2024

+

ARB.P. 1456/2024**NEW INDIA STRUCTURES PVT. LTD.****.....Petitioner**

Through: Ms. Yamunah Nachiar, Mr. S.Ravi
Shankar, Ms. Meghna Mukherjee,
Advocates.

versus**BIRD EXECUJET AIRPORT SERVICES PVT. LTD.....Respondent**

Through: Mr. Virender Mehta, Advocate.

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

1. The present petition filed under section 11(5) and (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 disputes between the parties have arisen in context of a Work Order dated 06.03.2019, in terms of which the petitioner was awarded the work of "*Construction of Apron, Taxi Track and Associated Work at designated location adjoining fore station number 1, Terminal 3, Indira Gandhi International Airport, New Delhi*" (hereinafter referred as '*the project*') at a contract price of Rs. 23,09,77,331/-. The petitioner *vide* letter dated 16.03.2020 was also awarded with additional work pertaining to the Apron and Taxi Track (Airside) (hereinafter referred as '*the additional*')



2024:DHC:9896



work’).

3. As per the Work Order, the stipulated dated for completion of the project was 31.07.2019. However, since additional work was awarded, the timelines were extended until 30.06.2020.

4. It is submitted by the petitioner that the contractual work was completed on 20.05.2020 and the Defect Liability Period (hereinafter referred as ‘DLP’) for the work was extended until 19.05.2022.

5. Disputes between the parties have arisen *inter alia* on account of alleged failure of the respondent to release the retention money and the payment for the completed works subsequent to the expiration of the DLP despite multiple reminders and representations by the petitioner.

6. The Agreement between the parties contains an arbitration clause as under:

“18. DISPUTE RESOLUTION

18.1 Any dispute, controversy or claim ("Dispute") arising out of, relating to, or in connection with this work, termination or validity here of shall initially be resolved by amicable negotiations between the parties within a period of 07 (seven) days; and if not resolved through such negotiations the same shall be referred for arbitration to a sole arbitrator to be appointed by the Managing Director of the Company or his nominee. The award passed by the Sole Arbitrator shall be final and binding on the parties. The arbitration shall be conducted under the Arbitration and conciliation Act 1996 (the "Arbitration Rules") as amended time to time. The venue of arbitration shall be New Delhi, India and it shall be conducted in the English language.

18.2 During the arbitration, the Parties shall continue to fulfill their respective obligations under this contract.

18.3 The arbitral award shall be in writing and shall be final and binding on the parties concerned.

18.4 This work shall be governed by the laws of India. In all respect of all matters arising out or relating to this purchase order, the courts at



2024:DHC:9896



Delhi shall have exclusive jurisdiction to the exclusion of all other courts.”

7. Disputes having arisen between the parties, notices dated 07.03.2024 and 05.04.2024 were issued to the respondent to address and resolve the outstanding issues as per clause 18.1 of the Work Order. However, the respondent failed to respond.

8. Since the disputes between the parties persisted, the petitioner issued notice for invocation of arbitration to the respondent and suggested name of an arbitrator for adjudication of the disputes between the parties. However, the respondent again failed to respond.

9. 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.

10. This Court *vide* order dated 01.10.2024, upon the request of the learned counsel for the respondent referred the parties to mediation under the aegis of the Delhi High Court Mediation and Conciliation Centre and observed as under:

“1. Learned counsel for the respondent submits that the respondent is desirous of seeking an amicable resolution of the matter through mediation.

2. He submits that the parties be referred to mediation and if no settlement is arrived at during the course of mediation, this Court may appoint a Sole Arbitrator to adjudicate the disputes between the parties, on the next date of hearing.”

11. However, it is submitted by the parties that no settlement has been arrived at during the course of mediation.

12. The learned counsel for the respondent does not dispute the existence of arbitration agreement. He accedes to the appointment of an independent



2024:DHC:9896



Sole Arbitrator by this Court to adjudicate the disputes between the parties.

13. In the above circumstances, since the existence of the arbitration clause 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.

14. Further, in terms of the judgments of the Supreme Court in ***Perkins Eastman Architects DPC v. HSCC (India) Ltd*** (2020) 20 SCC 760, ***TRF Limited v. Energo Engineering Projects Ltd***, (2017) 8 SCC 377 and ***Bharat Broadband Network Limited v. United Telecoms Limited***, 2019 SCC OnLine SC 547, it is incumbent on this Court to appoint an independent sole arbitrator to adjudicate the disputes between the parties.

15. Accordingly, Ms. Justice (Retd.) Deepa Sharma, Former Judge, Delhi High Court (Mob. No.: +91 9910384631) is appointed as the Sole Arbitrator to adjudicate the disputes between the parties.

16. 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.

17. The learned Sole Arbitrator shall be entitled to fee in accordance with IVth Schedule to the A&C Act; or as may otherwise be agreed to between the parties and the learned Sole Arbitrator.

18. The parties shall share the arbitrator's fee and arbitral costs, equally.

19. All rights and contentions of the parties in relation to the



2024:DHC:9896



claims/counter-claims are kept open, to be decided by the learned Arbitrator on their merits, in accordance with law.

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

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

SACHIN DATTA, J

DECEMBER 19, 2024/sl