



2024:DHC:9895



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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Date of Decision: 19.12.2024

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ARB.P. 1538/2024**GOLF DESIGNS**

.....Petitioner

Through: Mr. Krishna Barua, Advocate.

versus

SHAPOORJI PALLONJI AND COMPANY PVT LTD.

.....Respondent

Through: Mr. Babit Jamwal, Advocate.

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

1. The present petition filed under section 11(5) 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 a Work Order bearing Ref No. SPCL/RGCS/WOIFOP/2015/116 dated 14.01.2015, in terms of which the petitioner was appointed as a sub-contractor in a contract of "Lumpsum with firm price" executed between the petitioner and respondent to render the services for the purpose of establishing Field of Play and Practices Pitch at the International Cricket Stadium & Sports Complex at Pratap Sports College, Raipur, Dehradun for a contract price of Rs. 2,54,71,558/- alongwith service tax of Rs. 10,48,102/-.
3. The Agreement between the parties contains an arbitration clause as



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under:

“14. Settlement of Dispute & Arbitration

All disputes or difference of opinions, on account of interpretation of clauses, technical specifications etc. shall be resolved through direct and mutual discussions at site level. In the case of difference of opinion still persisting, then the matter shall be referred to Regional Head, at respective region. However, in case parties fail to reach amicable settlement, the matter shall be referred to arbitration. The Arbitration shall be governed as per Indian Arbitration & Conciliation Act, 1996 and shall be held in New Delhi.”

4. The project was inspected and approved by the Curator appointed by the Board of Control for Cricket in India (BCCI) vide letter dated 01.11.2017. Pursuant to which the project was certified by the respondent on 15.10.2018 and a certificate of completion was issued thereof.
5. Admittedly, the petitioner received ad-hoc payments (including tax) to the tune of Rs. 2,23,81,958/-. However, the disputes between the parties have arisen on account of alleged failure of the respondent to release the balance payment of Rs.14,73,702/- despite timely completion of work and issuance of completion certificate.
6. It is averred in the petition that the petitioner communicated its grievances to the concerned authorities through various representations and communications, however, the respondent failed to respond. Moreover, it is stated that the respondent's Vice President Corporate Commercial Head, vide an email dated 20.12.2018 had acknowledged the pending dues and undertook to clear the same.
7. It is also submitted that a petition filed by the petitioner under Section 9 of the Insolvency and Bankruptcy Code, 2016 before the NCLT, Mumbai Bench for the payment of pending dues, vide order dated 20.09.2022, was dismissed as withdrawn with liberty to approach the right forum for



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adjudication of disputes. The Court while passing the aforesaid order observed as under:-

“2. Counsel for the Corporate Debtor submits that the company petition was filed on 13.08.2021 claiming an amount of Rs.41 lakh which is below the threshold limit as per the Notification issued by the Ministry of Corporate Affairs vide notification dated 24.03.2020.

3. In view of the above notification, this Bench on perusal of records noticed that the Company Petition was filed below the threshold limit as prescribed under the Code. Hence, this Bench is of the considered view that the Petition filed u/s 9 of the Code is not maintainable and the same is liable to be dismissed. However, the petitioner is at liberty to approach any forum as per Law.”

8. Since the disputes between the parties persisted, a legal notice dated 20.04.2024 was issued to the respondent followed by issuance of a notice as per clause 14 of the contract, for invocation of arbitration on 03.06.2024.

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. The learned counsel for the respondent does not dispute the existence of arbitration agreement, however, disputes that the present petition is barred by limitation.

11. Since the existence of an 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 and 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.

12. Accordingly, Mr. Karn Bhardwaj, Advocate (Mob. +91 9818488194)



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is appointed as the Sole Arbitrator to adjudicate the disputes between the parties.

13. The respondent shall be entitled to raise appropriate objections as regards limitation/jurisdiction before the learned sole arbitrator which shall be duly considered and decided by the learned sole arbitrator before adjudication of the claim/s on merits.

14. 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.

15. 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.

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

17. 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.

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

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

SACHIN DATTA, J

DECEMBER 19, 2024/sl