



2024:DHC:8121



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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Date of Decision : 16.10.2024

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ARB.P. 1541/2024**MS INAM AND CO.****.....Petitioner**

Through: Mr. Anilendra Pandey, Advocate
(through VC) along with Mr.
Ashutosh Gupta, Advocate.

versus**AIRPORT AUTHORITY OF INDIA & ORS.****.....Respondents**

Through: Mr. Digvijay Rai, Advocate (through
VC) along with Ms. Chetna Rai, Mr.
Archit Mishra, Mr. Rohit Kumar
Munjal, Mr. Mr. Raghiv Ali Khan,
Advocates and Mr. Gagan Kochar, Sr.
Manager (Law) for AAI.

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

1. The present petition has been filed under Section 11 of the Arbitration and Conciliation Act, 1996 (hereinafter '*the A&C Act*') seeking appointment of a sole arbitrator for adjudicating the dispute arising between the parties.
2. The dispute between the parties have arisen in context of a contract agreement dated 16.07.2015. This agreement pertains to the water proofing treatment of flat roof terrace and gutters of Centaur Lake View Hotel Srinagar. The said agreement contains a dispute resolution clause which reads as under :-

"Clause 4.1 Settlement of disputes

It is specifically agreed by and between the parties that all the differences or disputes arising out of the Agreement of touching the



subject matter of the Agreement shall be decided by process of settlement and arbitration, as specified in Clause 25 of the General Condition of the Contract and the provision of the India Arbitration Act, 1996 (Jammu & Kashmir Arbitration and Conciliation Act 1997) shall apply Delhi Court alone shall have exclusive jurisdiction over the same.”

3. Clause 25 of the General Conditions of Contract provides as under :-

Dispute Resolution mechanism and Arbitration:

Except where otherwise provided in the contract, all questions and disputes relating to the meaning of the specifications, designs, drawings and instruction hereinbefore mentioned and as to the quality of workmanship of materials, used on the work as to any other question, claim right, matter or thing whatsoever. In anyway arising out of or relating to the contract, designs, drawings, specifications estimates, instructions, orders or these conditions otherwise concerning the work 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) Through Dispute Resolution Committee: Any dispute as stated above shall be referred in the first place to the dispute Resolution Committee (DRC) appointed by the Executive Direction/member (Planning)/Chairman, Airports Authority of India. It is also a term of contract that fees and other expense if payable to DRC shall be paid equally by both the parties i.e. AAI and Contractor. Unless the contract has already been repudiated or terminated, the contractor shall, in every case, continue to proceed with the work with all due diligence. It is also a term of contract that if the contractor does not make any demand for Dispute Resolution Committee in respect of any claim in writing within 90(Ninety) day of receiving the intimation from the AAI that the bill is ready for payment, the claim of contractor(s) will be deemed to have been waived and absolutely barred and the AAI shall be discharged and released of all liabilities under the contract in respect of these claims.

ii) Adjudication through Arbitration: Except where the decision has become final binding and conclusive in terms of Sub Para (i) above, disputes or differences shall be referred for adjudication through arbitration by a sole arbitrator appointed by the Member (Planning)/Chairman AAI. If the arbitrator so appointed is unable or unwilling to act or resign his appointment or vacates his office due to any reason whatsoever, another sole arbitrator shall be appointed in the manner aforesaid. Such person shall be entitled to proceed with the reference from the stage at which it was left by his predecessor. It is also



a term of contract that if the contractor does not make any demand for appointment of Arbitrator in respect of any claim in writing within 120 (One hundred twenty) day of receiving the decision/award from Dispute Resolution Committee, the claim of contractor(s) will be deemed to have been waved and absolutely barred and the AAI shall be discharged and released of all liabilities under the contract in respect of these claims. It is term of this contract that the party invoking arbitration shall give a list of disputes with amount claimed in respect of each such disputes along with the notice for appointment of arbitrator and giving reference to the rejection of their claims by the Dispute Resolution Committee. It is also a term of this contract that no person, other than a person appointed by above mentioned appointing authority, should act as arbitrator and if for any reasons that is not possible, the mater shall not be referred to arbitration at all.

The arbitration shall be conducted in accordance with the provisions of the Arbitration and Conciliation Act 1996 (Act No. 26 of 1996) or any statutory modification or re-enactment thereof and the rules made thereunder and for the time being in force shall apply to the arbitration proceeding under this clause.

It is also a term of this contract that 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 an party exceeds Rs 1,00,000-/-, the arbitrator shall give reasons for the award. It is the term of the contract that if any fees are payable to the arbitrator these shall be paid equally both the parities.

It is also a term of the contract that the arbitrator shall be deemed to have entered on the reference on the date he issues notice to both the parties calling them to submit their statement of claims and counter statement of claims. The venue of the arbitration shall be such place as may be fixed by the arbitrator in his sole discretion. The fees, if any, of the arbitrator shall, if required to be paid before the award is made and published, be paid half and half by each of the parties.

The cost of the reference and of the award (including the fees, if any of the arbitrator) shall be in the discretion of the arbitrator, who may direct to any by whom and in what manner, such costs or any part thereof shall be paid and will fix or settle the amount of costs to be so paid."



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4. In the present case, the petitioner sent a letter dated 20.05.2019 to the respondent requesting for the appointment of a dispute resolution committee, as contemplated in Clause 25 of the GCC (supra).
5. Upon receiving no response to the aforesaid letter, the petitioner sent a legal notice dated 07.12.2019 calling upon the respondent to appoint an arbitrator in accordance with Clause 25 of the GCC.
6. Thereafter, the petitioner preferred a petition under Section 11 of the A&C Act before the High Court of Jammu & Kashmir and Ladakh in ARB. P. No. 17/2023. The said Court, *vide* an order dated 23.02.2024, dismissed the petition for lack of jurisdiction since the arbitration agreement confers exclusive jurisdiction on courts in Delhi. The Court relied on the decision of the Supreme Court in **BGSSGS SOMA JV v. NHPC** 2020 4 SCC 234. Thereafter, the present petition under Section 11 was filed.
7. The respondent objects to the present petition on the ground that the notice dated 07.12.2019 invoking arbitration, does not enumerate the specific claims sought to be raised. Reliance is placed upon **Alupro Building Systems Pvt. Ltd. v. Ozone Overseas Pvt. Ltd.** 2017 SCC OnLine Del 7228 to contend that the legal notice dated 07.12.2019 fails to fulfil the mandatory requirements of a valid notice under Section 21 of the A&C Act inasmuch as it does not specifically enumerate the specific claims that are sought to be raised against the respondent.
8. The aforesaid contention is misconceived. For the purpose of a notice under Section 21 of the A&C Act, 1996, it would suffice if the broad heads of claims are disclosed. Neither in terms of the statutory prescription nor in terms of the dicta laid down in **Alupro Building Systems** (supra), it is mandatory to include minute or intricate details as regards the claims sought



to be raised. In **Ministry of Youth Affairs & Sports v. Agility Logistic Pvt. Ltd.**, 2022:DHC:1258, a Co-ordinate Bench of this Court has observed as under:

*“41. It is not necessary that a notice under Section 21 of the A&C Act quantifies the amounts claimed. It is required to set out the disputes. In the present case, it is not disputed that the Notice under Section 21 of the A&C Act clearly communicated the disputes between the parties. The Arbitral Tribunal had examined the said contention and found that the issue was covered by the decision of the Supreme Court in **State of Goa v. Praveen Enterprises: 2011 SCC OnLine SC 860**. The Arbitral Tribunal noted that it was not necessary for the claims to be specifically stated in the notice under Section 21 of the A&C Act, and therefore, the same could not be rejected only on the ground that there was no mention of the same in the notice under Section 21 of the A&C Act. ”*

9. In the legal notice dated 07.12.2019, the petitioner has broadly enumerated its claims that it seeks to raise in the proposed arbitration viz. towards non-payment for work done, release of security deposit, withheld amount, material dumped at site which has been damaged, payment for labour and engineers, and the compensation along with interest for the amounts held by the respondent.

10. Be that as it may, on the last date of hearing on 03.10.2024, the petitioner was directed to place on record, specific details as to the amount sought to be claimed under each head. Accordingly, the petitioner has filed an affidavit dated 07.10.2024, wherein it has been specified that the claims sought to be raised in the proposed arbitration are as under –

Claim No.	Description	Amount (Rupees)
1.	Due Payment	30,81,487/-



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	i) Pending Final Bill: Rs.23,5000/- ii) With held Payment: Rs. 7,31,487/-	
2.	Security Deposit	9,04,955/-
3.	Material Dumped	16,30,828/-
4.	Idle Charges for awaiting period for approval regarding arranging the additional machinery, workmen and additional funds.	4,26,000/-
5.	Interest @ 18%	
		60,43,270/- with 18% Interest

11. In the circumstances, since the existence of the arbitration agreement is admitted, there is no impediment in constituting an arbitral tribunal to adjudicate the disputes between the parties. Also in terms of the judgements in *Perkins Eastman Architects DPC v. HSCC (INDIA) Limited*, (2020) 20 SCC 760, *TRF Limited v. Energo Engineering Projects Limited*, (2017) 8 SCC 377 and *Bharat Broadband Network Limited v. United Telecoms Limited*, (2019) 5 SCC 755, it is incumbent on this Court to appoint an independent sole arbitrator.

12. Accordingly, Ms. Charanya Lakshmikumaran, Advocate (Mob. No.: +919871544553) is appointed as the Sole Arbitrator to adjudicate the disputes between the parties.

13. The learned Sole Arbitrator may proceed with the arbitration



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proceedings subject to furnishing to the parties requisite disclosure as required under Section 12 of the A&C Act.

14. It is agreed between the parties that the arbitration shall take place under the aegis of and under the rules of Delhi International Arbitration Centre (DIAC). It is directed accordingly.

15. It is clarified that this Court has not expressed any opinion as regards merits or demerits thereof of the respective contentions of the parties, including as regards the jurisdictional objections raised by the respondent. It shall be open to the learned Sole Arbitrator to duly consider the same and pass appropriate order/s thereon.

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

SACHIN DATTA, J

OCTOBER 16, 2024/dn