



2024:DHC:8726



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

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Date of Decision : 11.11.2024+ **ARB.P. 1730/2024**

JAIPAL SINGH

.....Petitioner

Through: Mr. Satyendra Kumar, Mr. Rajmangal Kumar, Ms. Sangeeta Kumari and Mr. Ranjit Pawar, Advs.

versus

DELHI DEVELOPMENT AUTHORITY

.....Respondent

Through: Mr. Arjun Mahajan, SC for DDA along with Ms. Neha Rai, Mr. Apoorv Upmanyu, Advocates.
Mr. Gaganmeet Singh Sachdeva, Adv.**CORAM:****HON'BLE MR. JUSTICE SACHIN DATTA****SACHIN DATTA, J. (ORAL)**

1. The present petition filed under section 11(6) of the Arbitration and Conciliation Act, 1996 (hereinafter referred as '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 the context of a tender awarded to the petitioner for the construction of 'RCC wall after demolishing the existing damaged boundary wall near HIT Park along Metro corridor at Maa Anand Mai Marg' (hereinafter referred as 'the project'). The bid of the petitioner was accepted *vide* Letter of Acceptance dated 15.12.2018 and pursuant thereto, on 10.01.2019, a contract was



executed between the parties.

3. The arbitration clause in the contract between the parties, is in the following terms: -

“CLAUSE 25-Settlement of Disputes and Arbitration

(A) Except where otherwise provided in the contract, all questions and disputes relating to the meaning of the specifications, design, drawings and instructions herein before mentioned and as to the quality of workmanship or materials used on the work or as to any other question, claim, right, matter or thing whatsoever in any way arising out of or relating to the contract, designs, drawings,' specifications, estimates, instructions, orders or these conditions or otherwise concerning the works 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) If the contractor considers any work demanded of him to be outside the requirements of the contract, or disputes any drawings, record or decision given in writing by the Engineer-in-Charge on any matter in connection with or arising out of the contract or carrying out of the work, to be unacceptable, he shall promptly within 15 days request the Superintending Engineer in writing for written instruction or decision. Thereupon the Superintending Engineer shall give his written instructions or decision within a period of month from the receipt of the contractor's letter.

If the Superintending Engineer fails to give his instructions or decision in writing within aforesaid period or if the contractor is dissatisfied with the instructions or decision of the Superintending Engineer, the contractor may, within 15 days of the receipt of Superintending Engineer's decision appeal to the Chief Engineer who shall afford an opportunity to the contractor to be heard, if the latter so desires, and to offer evidence in support of his appeal. The chief Engineer shall give his decision within 30 days of receipt of the Contractor's Appeal. If the contractor is dissatisfied with this decision, the contractor shall within a period of 30 days from receipt of the decision, give notice to the Engineer Member for appointment of Arbitrator, failing which, the said decision shall be final, binding and conclusive and not referable to adjudication by the Arbitrator.

It is a term of contract that each party invoking arbitration must exhaust the aforesaid mechanism of settlement of claims/ disputes prior to invoking arbitration.



Except where the decision has become final, binding and conclusive in terms of Sub Para

(i) above disputes or difference shall be referred for adjudication through arbitration by a Sole Arbitrator who shall be a technical person having the knowledge and experience of the trade, appointed by the Engineer Member, DDA. It will be no objection to any such appointment that the arbitrator so appointed is a DDA employee that he had to deal with the matter to which the contract relates and that in the course of his duties as DDA employee, he has expressed his views in all or any of the matter in dispute of difference. If the arbitrator so appointed is unable or unwilling to act or resigns 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 a term of this contract that the party invoking arbitration shall give a list of disputes with amounts claimed in respect of each such dispute along with the notice for appointment of arbitrator and giving reference to the rejection by the Chief Engineer of the appeal.

It is also a term of this contract that no person other than a person appointed by The Engineer Member, DDA, as aforesaid, should act as arbitrator and, if, for any reason that is not possible; the matter shall not be referred to arbitration at all. It is also a term of this contract that if the contractor does not make any demand for appointment of arbitrator in respect of any claims in writing as aforesaid within 120 days of receiving the intimation from the Engineer-in-Charge that the final bill is ready for the payment, the claim of the contractor shall be deemed to have been waived and absolutely barred and the DDA shall be discharged and released of all liabilities under the contract in respect of these claims.

The arbitration shall be conducted in accordance with the provisions of the Arbitration and Conciliation Act, 1996 (26 of 1996)/ The Jammu & Kashmir Arbitration and Conciliation Act-1997 (35 of 1997 as the case may be) or any statutory modifications or re-enactment thereof and the rules made there under 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 any party exceeds Rs.1,09,000/-, the arbitrator shall give reasons for the award



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It is also a term of the contract that if any fees are payable to the arbitrator, these shall be paid equally by both the parties.

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 the 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 settle the amount of costs to be so paid. or any part thereof shall be paid and fix or settle the amount of costs to be so paid.

(B) The Decision of the Superintending Engineer regarding the quantum as justification thereof of reduction as well in respect of rates for substandard work which may be decided to be accepted will be final and could not be open to Arbitration”

4. In terms of the said contract, the date of commencement of the project was 18.01.2019. The project was stipulated to be completed by 17.04.2019, however, admittedly, the work was completed only on 26.02.2021.
5. Disputes have arisen between the parties on account of balance payment pending against the final bill and penalty/liquidated damages imposed by the respondent on account of alleged delay of 90 days in completion of the project.
6. It is submitted by the petitioner that the delay was attributable to the project being held up due to public hinderances and spread of COVID-19. It is further submitted that the last public hindrance, was removed from the site only by 03.02.2021, pursuant to which, within a period of 23 days the balance work was completed by the petitioner.
7. Disputes having arisen between the parties, the petitioner



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communicated its grievances through various representations to the concerned authorities as per the terms of the contract. Thereafter, since the dispute between the parties persisted, the petitioner as per clause 25 of the contract *vide* letter dated 28.10.2023 referred the disputes to Dispute Redressal Committee. It is submitted that the respondent failed to take any concrete steps for resolution of disputes.

8. Thereafter, the petitioner issued a notice invoking arbitration on 06.03.2024 and a corrigendum (amended claim) of the aforesaid notice on 22.06.2024. However, the respondent failed to respond to the same.

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. Learned counsel on behalf of the respondent does not dispute existence of the arbitration agreement, and accedes to an independent sole arbitrator being appointed by this Court to adjudicate the disputes between the parties.

11. Since the existence of the arbitration clause is evident from a perusal of the agreement, there is no impediment in appointing an independent Sole Arbitrator for adjudicating the disputes between the parties as prayed for, and as mandated 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, ***Bharat Broadband Network Limited v. United Telecoms Limited.***, 2019 SCC OnLine SC 547, ***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,



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2023 SCC OnLine SC 1666.

12. Accordingly, Ms. Ritambhara Kalra, Advocate (Mobile – 9773606577) is appointed as the Sole Arbitrator to adjudicate the disputes between the parties.

13. The respondent shall be at liberty to raise preliminary objections as regards arbitrability/jurisdiction, if any, which shall be decided by the arbitrator, in accordance with law.

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

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

16. Parties shall share the arbitrator's fee and arbitral cost, equally. All rights and contentions of the parties in relation to the claims/counter claims are kept open, to be decided by the learned Sole Arbitrator on their merits, in accordance with law.

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

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

SACHIN DATTA, J

NOVEMBER 11, 2024/sl