



2024:DHC:8827



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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Date of Decision: 14.11.2024

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ARB.P. 1762/2024**BHAYANA BUILDERS PRIVATE LIMITED**

.....Petitioner

Through: Mr. Kartik Nayar, Mr. Rishabh Kumar, Mr. Krish Kalra, Mr. Kashish Bansal, Mr. Divyansh Rai and Mr. Ajit Kumar, Advs.

versus

CHINTELS INDIA PRIVATE LIMITED

.....Respondent

Through: Mr. K. Harshvardhan and Mr. Raghav Kohli, Advs.

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

1. Issue notice. Learned counsel, as aforesaid, accepts notice on behalf of the respondent.
2. The present petition has been filed under Section 11(6) of the Arbitration and Conciliation Act, 1996 (hereinafter "*the A&C Act*") seeking appointment of the presiding arbitrator so as to constitute a three-member arbitral tribunal as contemplated in the arbitration agreement between the parties.
3. The disputes between the parties have arisen in context of a construction contract dated 14.03.2011 (hereafter '*the contract*') relating to civil, structure, electrical conduiting and finishing work for Phase-I Chintels Paradise, Sector-109, Gurgaon.
4. The arbitration clause contained in the agreement is as follows:-



2024:DHC:8827



“47. Settlement of Disputes/ Arbitration:

All disputes and differences of any kind whatsoever arising out of or in connection with this Contract whether during the progress of the work or after their completion shall be referred in writing by the Contractor to the Owner's Representative, and the Owner shall within 10 days from receipt make and notify its decisions thereon in writing to the Contractor.

Decisions, directions, clarifications, measurements, drawings and certificates with respect to any matter the decision for which is specially provided for by these or other special conditions to be given and made by the Owner's Representative or by the PMC are matters which are referred to hereinafter as exempted matters and shall be final and binding upon the Contractor and shall not be set aside on account of non-observance of any formality, any omission, delay or error in proceeding in or about the same or on any other ground or for any reason and shall be without appeal. They shall be specifically excluded from the scope of arbitration proceedings hereinafter referred to.

Subject to the aforesaid in the event of any dispute or difference between the parties hereto as to the construction or operation of this Contract, or the respective rights and liabilities of the parties on any matter in question, dispute or difference on any account or as to the withholding by the Owner of any certificate to which the Contractor may claim to be and entitled to or if the Owner fails to make a decision within the aforesaid time, then and in any such case, but except in any of the exempted matters referred to in the above clause, the Contractor after 90 days of his presenting his final claim on the disputed matters, may demand in writing that the dispute or difference be referred to and settled by two arbitrators, one to be nominated by the Owner and the other by the Contractor. The award of the Arbitrators or the Umpire, who shall be appointed by the two arbitrators if there is any disagreement between the two Arbitrators before entering on the reference, shall be final and binding on both the parties. The provision as per the Arbitration and Conciliation Act 1996 and subsequent modifications thereon, shall apply to such arbitration. The arbitration venue shall be at New Delhi. The procedure for the arbitration shall be determined by the arbitrators. Costs of such arbitration shall be equally shared between the Owner and the Contractor. The Contractor shall not, except with the consent in writing of the Owner, the Architect, in any way delay the carrying out of the Work by reason of such matter, question or dispute being referred to arbitration but shall proceed with the work with all due diligence and shall, until the decision of the arbitrator is given, abide by the decision of the Architect and no award of the arbitrator shall relieve the Contractor of his obligations to adhere strictly to the Owner, the Owner's Representative's or the PMC's instructions with regard to the actual carrying out of the Work except as specifically affected by such award.”



2024:DHC:8827



5. It is noticed that in terms of the aforesaid arbitration clause contained in clause 47 of the Agreement, the petitioner, in its Section 21 notice dated 06.01.2023 has appointed Justice (Retd.) Dr. Satish Chandra Sharma, former judge of Allahabad High Court, as its nominee arbitrator. *Vide* order dated 17.09.2024 passed in ARB.P. No. 1046/2024, Ms. Justice (Retd.) Gita Mittal, former Chief Justice of Jammu and Kashmir High Court, has been appointed as the nominee arbitrator of the respondent. The said order also directed the two arbitrators to proceed with appointment of the presiding arbitrator, in accordance with law.

6. It transpires during the course of hearing that the two arbitrators have appointed Mr. Justice (Retd.) Vineet Saran, former Judge, Supreme Court of India, as the presiding arbitrator.

7. Learned counsel for the petitioner seeks to contend that the said appointment of the presiding arbitrator is invalid inasmuch as it is in contravention of the judgment in ***Datar Switchgears Ltd. v. Tata Finance Ltd. and Anr.*** (2000) 8 SCC 151 and therefore this Court should appoint another presiding arbitrator to adjudicate the disputes between the parties.

8. As noticed, order dated 17.09.2024 passed in ARB.P. No. 1046/2024, clearly contemplated that the presiding arbitrator would be appointed by the respective nominee arbitrators of the parties. The said exercise has been carried out and the presiding arbitrator has been appointed by the two nominee arbitrators. In order to obviate the technical objection raised by the petitioner, the presiding arbitrator appointed, as aforesaid, is directed to be treated as having been appointed by this Court in these proceedings.



2024:DHC:8827



9. The present petition is disposed of in the above terms.

SACHIN DATTA, J

NOVEMBER 14, 2024/at