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

+ **ARB.P. 1775/2024 & I.A. 44835/2024-exemption**

ASHISH GUPTA

.....Petitioner

Through: **Mr. Vinay Kumar and Mr. Abhishek
Kumar, Advocates**

versus

PUBLIC WORKS DEPARTMENT & ANR.

.....Respondents

Through: **Mr. Tushar Sannu, standing counsel
GNCTD.**

CORAM:

HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA

ORDER

% **19.12.2024**

1. This is a petition filed under Section 11(6) of the Arbitration and Conciliation Act, 1996 ('Act of 1996'), for seeking appointment of an Arbitral Tribunal comprising of a Sole Arbitrator, to adjudicate the disputes between the parties.

2. It is stated in the petition that the disputes between the parties have arisen with respect to a contract dated 07.05.2021, executed between the parties for providing services of day-to-day electrical maintenance work under MOEI in Residential and Non-Residential Buildings at IHBAS, Dilshad Garden, during the year 2020-2021. It is stated that the said contract contains an arbitration agreement at Clause 25 which reads as under:

"Clause 25

Settlement of Disputes & arbitration: Except where otherwise provided in the contract, all questions and disputes relating to the meaning of the specifications, design, drawings and instructions hereinbefore mentioned and as to the quality of workmanship or materials used on the work or as to any other questions, 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, competition 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 or if the Engineer in Charge considers any act or decision of the contractor on any matter in connection with or arising out of the contract or carrying out of the work, to be unacceptable and is disputed, such party shall promptly within 15 days of the arising of the disputes request the Chief Engineer/CPM, or where there is no Chief Engineer/CPM, request the Additional Director General Special Director General who shall refer the disputes to Dispute Redressal Committee (DRC) within 15 days along with a list of disputes with amounts claimed if any in respect of each such dispute. The Dispute Redressal Committee (DRC) give its decision within a period of 60 days extendable by 30 days by consent of both the parties from the receipt of reference from CE/CPM/ADG/SDG. The constitution of Dispute Redressal Committee (DRC) shall be as indicated in Schedule 'F. Provided that no party shall be represented before the Dispute Redressal Committee by an advocate/legal counsel etc.

The DRC will submit its decision to the concerned ADG/SDG for acceptance ADG SDG in a time limit of 30 days from receipt of DRC decision will convey acceptance or otherwise on the said decision. If the Dispute Redressal Committee (DRC) fails to give its decision within the aforesaid period or the ADG/SDG fails to give his decision in the aforesaid time limit or any party is dissatisfied with the decision of Dispute Redressal Committee (DRC)/ADG/SDG then either party may within a period of 30 days from the receipt of the decision of Dispute Redressal Committee (DRC)/ ADGI SDG or on expiry of aforesaid the time limits available to DRC/ADG/SDG may give notice to the Chief Engineer/CPM, CPWD, in charge of the work or if there be no Chief Engineer/CPM,, the Additional Director General/Special Director General concerned or if there be no Additional Director General/ Special Director General, the Director General CPWD for appointment of arbitrator on prescribed proforma as per Appendix XVII under Intimation to the other party.



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. The CE/ADG/SDG shall in such case appoint the sole arbitrator or one of the three arbitrators as the case may be within 30 days of receipt of such a request and refer such disputes to arbitration. Wherever the Arbitral Tribunal consists of three Arbitrators, the contractor shall appoint one arbitrator within 30 days of making request for arbitration or of receipt of request by Engineer-in-charge to CE/ADG/SDG/DG for appointment of arbitrator, as the case may be, and two appointed arbitrators shall appoint the third arbitrator who shall act as the Presiding Arbitrator. In the event of

- (a) A party fails to appoint the second Arbitrator, or
- (b) The two appointed Arbitrators fail to appoint the Presiding Arbitrator, then the Director General, CPWD shall appoint the second or Presiding Arbitrator as the case may be
- (ii) Dispute or difference shall be referred for adjudication through arbitration by a Tribunal having sole arbitrator where claimed amount is Rs. 20 Crore or less. Where claimed Value is more than Rs. 20 Crore, Tribunal shall consist of three Arbitrators as above. The requirements of the Arbitration and Conciliation Act, 1996 (26 of 1996) and any further statutory modification or re-enactment thereof and the rules made there under and for the time being in force shall be applicable.

It is a term of this contract that the party invoking arbitration shall give a list of disputes with amounts claimed, if any, in respect of each such dispute along with the notice for appointment of arbitrator and giving reference to the decision of the ADG/ SDG on the finding recommendation of DRC.

It is also a term of this contract that member(s) of the Arbitration Tribunal shall be a Graduate Engineer with experience in handling public works engineering contracts, and further he shall have earlier worked at a level not lower than Chief Engineer/ equivalent (ie. Joint Secretary level of Government of India). This shall be treated as a mandatory qualification to be appointed as arbitrator.

The place of arbitration shall be as mentioned in Schedule F. In case there is no mention of place of arbitration, the arbitral tribunal shall determine the place of arbitration.

The venue of the arbitration shall be such place as may be fixed by the Arbitral Tribunal in consultation with both the parties. Failing any such agreement, then the Arbitral Tribunal shall decide the



venue.”

(Emphasis Supplied)

3. Learned counsel for the Petitioner states that in compliance with the pre-condition of Clause 25, the petitioner had taken recourse of Dispute Redressal Committee (‘DRC’) and the DRC during its 3rd meeting, had directed the officials of the respondents to make payment of the legitimate amount against the legitimate bills within 15 days. He states that however, respondents failed to clear the outstanding dues of the petitioner.

4. He states therefore, the petitioner vide notice dated 16.08.2024 invoked the arbitration clause and sought for the appointment of a sole arbitrator to adjudicate the disputes between the parties; however, the respondents have failed to reply to the said notice. He states that the claim amount is approximately Rs. 56 lakhs.

5. Mr. Tushar Sannu, learned standing counsel for GNCTD states that the respondents does not dispute the existence of the arbitration agreement.

6. He states that the respondents have no objection to the appointment of a neutral arbitrator by this Court in view of the law laid down by the Supreme Court in **Perkins Eastman Architects DPC and Ors. v. HSCC (India) Ltd¹**.

7. He states that respondents also do not have any objection if a retired Judge from the District Judiciary is appointed as a Sole Arbitrator. He states that Respondents are consenting to the waiver of the condition in the arbitration clause that the arbitrator has to be a Chief Engineer or its equivalent.

¹ (2020) 20 SCC 760



8. In this regard Mr. Tushar Sannu had handed over screenshot of WhatsApp chat wherein concerned officer of respondents has acceded for appointment of retired Judge of District Court as an arbitrator.

9. In response, learned counsel for the Petitioner states that he as well has no objection to the appointment of a retired Judge from the District Judiciary as the Sole Arbitrator.

10. This Court has considered the submission of the parties

11. In the facts of this case, there is admittedly no controversy as regards existence of an arbitration agreement. There is thus no impediment in appointing a Sole Arbitrator to adjudicate the dispute between the parties.

12. As noted above, the parties jointly request that a retired Judge from District Judiciary may be appointed as a Sole Arbitrator. The parties thus jointly waive the condition in the arbitration clause which stipulates appointment of an engineering graduate who has worked at a level not lower than Chief Engineer/equivalent (i.e. Joint Secretary level of Government of India).

13. The counsels also consent that the arbitration be held under the aegis of Delhi International Arbitration Centre ('DIAC').

14. In view of the above, the disputes between the parties under the said agreement are referred to the arbitral tribunal, with the following directions:

- a) Mr. J.R. Aryan, ADJ (Retd.) M. No. 9958697034 is hereby appointed as a Sole Arbitrator to adjudicate the disputes between the parties.
- b) The remuneration of the Sole Arbitrator shall be as per the fee Schedule of the DIAC.
- c) The Sole Arbitrator is requested to furnish a declaration in terms of



Section 12 of the A&C Act before entering into the reference.

d) It is made clear that all the rights and contentions of the parties, including as to the arbitrability of any of the claims/counter claims, any other preliminary objection, as well as claims on merits of the dispute of either of the parties, are left open for adjudication by the learned arbitrator on their merits, in accordance with law.

15. The parties are directed to appear before the learned Arbitrator for preliminary hearing on 17.01.2025 at 04:30 PM.

16. Needless to state that nothing in this order shall be construed as an expression of opinion on the merits of the case.

17. A copy of this order be sent to DIAC and the Sole Arbitrator.

18. The learned counsel for the respondents is directed to place the WhatsApp chat exchanged with the officer on record within one (1) week.

19. The digitally signed copy of this order, duly uploaded on the official website of the Delhi High Court, www.delhihighcourt.nic.in, shall be treated as a certified copy of the order for the purpose of ensuring compliance. No physical copy of order shall be insisted by any authority/entity or litigant.

MANMEET PRITAM SINGH ARORA, J
DECEMBER 19, 2024/AKT/hp
Click here to check corrigendum, if any