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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **ARB.P. 1900/2024**
D SHARMA CONSTRUCTIONPetitioner

Through: Mr. Animesh Khandelwal, Advocate.

versus

NORTHERN RAILWAYRespondent

Through: Mr. Sushil Kumar Pandey, SPC with
Ms. Richa Pandey, Advocate.

CORAM:
HON'BLE MS. JUSTICE SWARANA KANTA SHARMA

ORDER
18.12.2024

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1. The instant petition under Section 11(5) and (6) of the Arbitration and Conciliation Act, 1996 has been filed on behalf of petitioner for appointment of an Arbitrator, for adjudication of disputes between the parties arising out of an Agreement No. 18/DEN-IV/18-19 dated 14.08.2018.
2. The brief facts of the case, as set out in the petition, are that on 15.06.2018, the respondent was awarded a tender for the construction of "2.44 m wide FOB near L-xing 11 at km 16.00 between NNO-MGLP station on DLI-BTI section under ADEN/ROK" vide letter no. 128-W/260/47/18-19/W-IV. On 14.08.2018, the contract between the petitioner and the respondent was officially entered into and executed as Agreement No. 18/DEN-IV/18-19. On 11.03.2020, a letter was sent by the petitioner to the respondent, and on 24.11.2020, response to the said letter was received from the respondent by the petitioner, by way of which the contract



was extended up to 31.12.2020. On 04.09.2023, a letter was sent by the petitioner to the respondent requesting for clearing pending payments and for personal meeting with the officials to resolve certain issues. On 22.11.2023, the Arbitration Clause was invoked by the petitioner, as per Clause 64 of the General Conditions of Contract (GCC). On 19.01.2024, the invocation letter was sent to respondent on the corrected letterhead along with copy of invocation letter dated 22.11.2023. On 18.07.2024, a letter was sent to the respondent by the petitioner demanding payment of final bill and other claims, however, no response was received to the same as well as to the invocation letter.

3. Since no further communications were exchanged and the parties were unable to mutually agree to the appointment of a Sole Arbitrator to adjudicate the disputes between the parties, the present petition has come to be filed.

4. Clause 64(1)(i) of the GCC, which contains the arbitration clause, is set out below:

“64.(1) (i) 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 Railway of any certificate to which the contractor may claim to be entitled to, or if the Railway fails to make a decision within 120 days, then and in any such case, but except in any of the 'excepted matters' referred to in Clause 63 of these Conditions, the contractor, after 120 days but within 180 days of his presenting his final claim on disputed matters shall demand in writing that the dispute or difference be referred to arbitration.”

5. The learned counsel for the respondent has no objection to the appointment of an independent Sole Arbitrator by this Court, to adjudicate the disputes between the parties.



6. Accordingly, Mr. S.K. Tondon, Additional District & Sessions Judge (Retd.) (Mobile No.9811719888) is appointed as the Sole Arbitrator to adjudicate the disputes between the parties.
7. The respondent shall be at liberty to raise appropriate objections as regards jurisdiction/arbitrability/limitation etc. which shall be considered by the learned Arbitrator in accordance with law.
8. The respondent shall also be at liberty to file counter-claims before the learned Arbitrator.
9. The arbitration shall be conducted under the aegis of the Delhi International Arbitration Centre (*DIAC*), since the learned counsel appearing for both the parties requested that the proceedings be conducted under the aegis of DIAC. The learned Arbitrator shall be entitled to fee in accordance with the Schedule of DIAC.
10. The learned 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 and/or as per the rules and procedures of DIAC.
11. Needless to say, nothing in this order shall be construed as an expression of opinion of this Court on merits of the case.
12. The present petition stands disposed of in the above terms.
13. The order be uploaded on the website forthwith.

SWARANA KANTA SHARMA, J

DECEMBER 18, 2024/zp

Click here to check corrigendum, if any