



2024:DHC:9605



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

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Date of Decision: 11.12.2024+ **ARB.P. 1921/2024 and IA Nos.46901/2024, 46902/2024****M/S SUNRISE ENTERPRISES**

.....Petitioner

Through: Ms. Harsh Chachra, Ms. Sreyashi Banerjee, Mr. Anshu Nanda and Mr. Rajender Kumar, Adv.

versus

IRRIGATION AND FLOOD**CONTROL DEPARTMENT GOVT. OF NCT OF DELHI**

.....Respondent

Through: Mr. Avishkar Singhvi, ASC, Mr. Naved, Adv.
Mr. Tushar Sannu, Adv. for GNCTD.**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 'the 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 Letter of Acceptance (LoA) dated 16.03.2023 bearing No.EE/CD-XIII/Acs/2022-23/83/6434, awarded to the petitioner for the works of '*Maintenance of Mungleshpur Drain from RD 0m to 10362m 2711-Revenue*' at a contract price of Rs.16,90,716/-
3. As per the letter dated 27.03.2023, bearing No. EE/CDXIII/Acs/2022-



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23/83/6619, the stipulated date for commencement of the works was 31.03.2023 and completion was 26.09.2023. Further, in compliance of the LOA, the petitioner furnished performance guarantee in the prescribed form.

4. The respondent issued show cause notices bearing Nos. EE/CD-XIII/Acs/2022-23/83/601 and EE/CD-XIII/Acs/2022-23/83/1368 dated 12.05.2023 and 06.06.2023 respectively *inter alia* on account of alleged slow progress of work and inadequate number of labour and machinery deployed by the petitioner at the project site. Pursuant thereto, the respondent *vide* letter dated 19.06.2023 determined the contract as well as forfeited the security deposit and performance guarantee furnished by the petitioner.

5. The dispute between the parties have arisen *inter alia* on account of the alleged illegal and unlawful determination of the contract, forfeiture of the performance guarantee and failure of the respondent to pay as well as cooperate to undertake joint survey/measurement for the final bill for the work executed by the petitioner prior to the determination of contract.

6. Disputes having arisen between the parties, the petitioner communicated its grievances/claims to the concerned authorities through various representations/demand notices. It is averred in the petition that the respondent despite responding to the said communications failed to take any concrete steps for resolution of the disputes/claims.

7. Since the dispute between the parties persisted, the petitioner as per clause 25 of the contract *vide* letter dated 03.03.2024 referred the disputes to Dispute Redressal Committee followed by a letter dated 29.03.2024 for invocation of arbitration. However, the respondent failed to respond.

8. 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.

9. Admittedly, the following arbitration clause contained in the General Contract Condition is applicable to the contract between the parties:-

“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 here-in before mentioned and as to the quality of workmanship or material 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 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 or any party is dissatisfied with the decision of Dispute



Redressal Committee (DRC)/ADG/SDG the neither party may within a period of 30 days from the receipt of the decision of Dispute Redressal Committee (DRC)/ADG/SDG or on expiry of aforesaid the time limit 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, the Director General, CPWD for appointment of arbitrator on prescribed proformas 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/DG 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 Arbitrators 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 or 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 I recommendation of DRC.

It is also a term of this contract that any member 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 (i.e. Joint Secretary level of Government of India). This shall be treated as a mandatory qualification to be appointed as arbitrator.

Parties, before or at the time of appointment of Arbitral Tribunal may agree in writing for fasttrack arbitration as per the Arbitration and Conciliation Act, 1996 (26 of 1996) as amended in 2015.

Subject to provision in the Arbitration and Conciliation Act, 1996 (26 of 1996) as amended in 2015 whereby the counter claims if any can be directly filed before the arbitrator without an requirement of reference by the appointing authority. 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 00,000/-, the arbitrator shall give reasons for the award.

It is also a term of the contract that fees payable to arbitral tribunal shall be as approved by DG. CPWD, OM issued vide no.2/2006/SE(TLC)/CSQ /137 dated 19-11-2019 (or its latest amendment as approved by DG. CPWD). This fee shall be shared equally by parties.

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.”

10. Further, admittedly since the agreement was executed from Delhi, the work executed was within the territorial limits of Delhi and the firm of the petitioner is registered as well as the office of respondent is headquartered at Delhi, it is undisputed that this Court has jurisdiction under Section 2(e) of the A&C Act to entertain the present petition.

11. Learned counsel for the respondent does not dispute the existence of arbitration agreement. He accedes to the appointment of an independent Sole Arbitrator by this Court to adjudicate the disputes between the parties.



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12. Further, the learned counsel for the respondent requests that in terms of the contractual prescription learned Sole Arbitrator should be a graduate engineer with experience in handling public works engineering contracts and further that he shall have earlier worked at a level not lower than Chief Engineer or equivalent. Learned counsel for the petitioner is agreeable to the said suggestion.

13. Since the existence of the arbitration clause is evident from a perusal of the contract, there is no impediment to constituting an arbitral tribunal for adjudicating the disputes between the parties, as mandated in terms of the judgments of the Supreme Court in ***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***, 2023 SCC OnLine SC 1666.

14. Further, 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 and ***Bharat Broadband Network Limited v. United Telecoms Limited***, 2019 SCC OnLine SC 547, it is incumbent on this Court to appoint an independent sole arbitrator to adjudicate the disputes between the parties.

15. Accordingly, Ms. Priyanka Dalal, Advocate (Mob. No.: +91.9878063152) is appointed as the Sole Arbitrator to adjudicate the disputes between the parties.

16. The respondents 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.

17. 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.

18. At the joint request of the parties, the arbitration shall take place under the aegis of and as per the rules of the Delhi International Arbitration Centre (DIAC).

19. 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.

20. Needless to say, all rights and contentions of the parties are reserved. This order shall not be construed as an expression of opinion of this Court on the merits of the disputes sought to be raised.

21. The petition is allowed in above terms.

SACHIN DATTA, J

DECEMBER 11, 2024/cl/sl