



2024:DHC:9892



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

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Date of Decision : 19.12.2024+ **O.M.P.(I) (COMM.) 394/2024, I.A. 47934/2024**

(72) M/S ANAND AND CO.

.....Petitioner

Through: Mr. Kunwar Chandresh, Ms. Poonam Prasad, Mr. Divyansh Singh, Ms. Anushka Nigam, Mr. Munis Nasir, Advocates.

versus

AIRPORT AUTHORITY OF INDIA

.....Respondent

Through: Mr. Digvijay Rai, Mr. Archit Mishra, Advocates.

+ **ARB.P. 2079/2024**

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CORAM:**HON'BLE MR. JUSTICE SACHIN DATTA****SACHIN DATTA, J (Oral)****IA No.48878/2024 (Exemption) in ARB.P. 2079/2024**

1. Allowed, subject to all just exceptions.
2. Application stands disposed of.

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3. Issue notice. Learned counsel, as aforesaid, accepts notice on behalf of the respondent.



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4. The present petition under Section 11(6) of the Arbitration and Conciliation Act, 1996 (hereinafter '*the A&C Act*') seeks the constitution of an arbitral tribunal for adjudicating the disputes between the parties.
5. The disputes between the parties have arisen in the background of a notice inviting tender dated 13.07.2020 issued by the respondent for "Annual Operation and maintenance of Sub-Station, Power House, Internal and External electrical installations etc. at DATS Complex, IGI Airport, New Delhi for two years i.e. (2020-2022)". In response to the said notice, the petitioner submitted its tender and the same was accepted by a letter of acceptance/work order dated 11.08.2020.
6. Subsequent to completion of the work on 30.09.2022, a completion certificate dated 12.02.2024 was issued by the respondent to the petitioner. On 09.10.2024, the respondent issued a show cause notice to the petitioner for allegedly "fraudulently claiming wages, provident fund, ESI and bonus from two different sites for the same contractual manpower". The said notice was responded to by the petitioner *vide* a reply dated 19.10.2024. However, the respondent sent a second show cause notice dated 22.10.2024; on account of the reply dated 19.10.2024 being considered unsatisfactory. The petitioner again responded *vide* reply dated 01.11.2024.
7. By order dated 06.11.2024, the respondent debarred the petitioner from participating in any tenders invited by the respondent, for a period of two years.
8. Clause 25 of the Clauses of Contract contains a dispute resolution clause and reads as under:-



“Except where otherwise provided in the contract, all questions and disputes relating to the meaning of the specifications, design, drawings and instruction here-in 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 work 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 requirement of the contract, or disputes any drawing, 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 Executive Director (Engg.)/Regional Executive Director/Member (Plg) /Chairman, AAI as the case may be, who shall refer the dispute to Dispute Redressal Committee (DRC) within 15 days along with a list of disputes with amounts claimed if any, in respect of each such disputes.

The Dispute Redressal Committee (DRC) shall give the opposing party two weeks for written response, and 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 the Executive Director (Engg.)/Regional Executive Director/Member (Plg) /Chairman, AAI. Provided that no party shall be represented before the Dispute Redressal Committee by an advocate / legal counsel etc.

If the Dispute Redressal Committee (DRC) fails to give its decision within aforesaid period or any party is dis-satisfied with the decision of Dispute Redressal Committee (DRC) or expiry of time limit given above, then either party may within a period of 30 days from the receipt of the decision of Dispute Redressal Committee (DRC), give notice to the Executive Director (Engg.)/Regional Executive Director/Member (Plg) /Chairman, AAI as the case may be for appointment of Arbitrator on prescribed proforma as per Appendix-XVII. under intimation to the other party. It is also a term of contract and each party invoking Arbitration must exhaust the aforesaid mechanism of settlement of claims/disputes prior to invoking Arbitration. The Executive Director (Engg.)/Regional Executive Director/Member (Plg) /Chairman, AAI 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



Executive Director (Engg.)/Regional Executive Director/Member (Plg) /Chairman, AAI 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 Member (Plg) / Chairman, AAI shall appoint the second or Presiding Arbitrator as the case may be.*

ii Disputes or difference shall be referred for adjudication through arbitration by a Tribunal having Sole Arbitrator where tendered amount is Rs. 300.00 Cr or less. Where tendered value is more than Rs. 300.00 Cr., Tribunal shall consist of three arbitrators as above. The requirements of the arbitration and the conciliation act, 1996 (26 of 1996) and further modified Act in 2015 and any further statutory modifications or reenactment thereof and the rules made thereunder 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 disputes along with the notice for appointment of Arbitrator and giving reference to the decision of the DRC. It is also term of this contract that any member of Arbitration Tribunal shall be a graduate engineer with experience in handling public works, engineering contracts at a level not lower than Chief Engineer. This shall be treated as mandatory qualification to be appointed as Arbitrator. Parties, before or at the time of appointment of a arbitral Tribunal may agree in writing for fast track 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 any 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 disputes and claim referred to him and in all cases where the total amount of the claims by any party exceed Rs. 1,00,000/-, the Arbitrator shall give reasons for the award. It is also a term of the contract that if any fees are payable to the arbitrator, these shall be paid as per the Act. 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 notice to both the parties calling them to submit their statement of claims and counter statement of claims. The place of the arbitration shall be 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."



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9. Disputes having arisen between the parties, the petitioner issued a notice invoking arbitration dated 09.12.2024; proposing the names of three persons who could be appointed as the sole arbitrator to adjudicate the disputes between the parties. However, the said notice was not responded to by the respondent. In these circumstances, the present petition has come to be filed.

10. Learned counsel for the respondent does not dispute the existence of the arbitration agreement.

11. As held in **SBI General Insurance Co. Ltd. v. Krish Spinning** 2024 SCC OnLine SC 1754, the scope of enquiry in these proceedings, under Section 11 of the A&C Act, is confined to only ascertaining the existence of an arbitration agreement. In the present case, since there is no controversy as regards the existence of the arbitration agreement, there is no impediment to constituting an Arbitral Tribunal to adjudicate the disputes between the parties.

12. Also, in terms of the judgments of the Supreme Court in **Perkins Eastman Architects DPC v. HSCC (INDIA) Limited**, (2020) 20 SCC 760, **TRF Limited v. Energo Engineering Projects Limited**, (2017) 8 SCC 377 and **Bharat Broadband Network Limited v. United Telecoms Limited**, (2019) 5 SCC 755, it is incumbent on this Court to appoint an independent Sole Arbitrator to adjudicate the disputes between the parties.

13. Accordingly, Mr. Justice (Retd.) Talwant Singh, Former Judge, Delhi High Court (Mob. No. +91 9910384653), is appointed as the Sole Arbitrator to adjudicate the disputes between the parties.

14. The respondents shall be at liberty to raise preliminary objections as regards arbitrability/jurisdiction, if any, which shall be decided by the



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arbitrator, in accordance with law.

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

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

17. 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.

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

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

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20. This is a petition filed under Section 9 of the A&C Act seeking urgent interim orders.

21. It is averred in the petition that the emergent situation has been created on account of the petitioner's apprehension of being subjected to further coercive steps by the respondent subsequent to being debarred by the respondent from participating in any tenders invited by it for a period of two years.

22. Since a learned sole arbitrator has already been appointed to adjudicate the disputes between the parties, it would be apposite if the present petition under Section 9 of the A&C Act is treated as an application under Section 17 of the A&C Act, and accordingly, dealt with, by the



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learned Sole Arbitrator. It is directed accordingly.

23. In view of the urgency of the relief sought for in the present petition, the petitioner shall be at liberty to request the learned Sole Arbitrator for expeditious consideration thereof.

24. The present petition is disposed of with the aforesaid directions.

SACHIN DATTA, J

DECEMBER 19, 2024/dn

Signature Not Verified

Digitally Signed By: ROHIT
KUMAR PATEL
Signing Date: 24.12.2024
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