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

+ **ARB.P. 98/2025**

MR ASHWANI GARG

.....Petitioner

Through: Mr. Avinash Trivedi, Mr. Anurag
Kaushik and Mr. Rahul Aggarwal,
Advocates.

versus

**DELHI TOURISM AND TRANSPORTATION DEVELOPMENT
CORPORATION LTD**

.....Respondent

Through: Mr. Umang Tyagi and Mr. Zuber Ali,
Advocates.

CORAM:

HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

ORDER

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18.02.2025

1. The Petitioner has approached this Court under Section 11(6) of the Arbitration & Conciliation Act seeking appointment of an Arbitrator for adjudicating the disputes between the parties.
2. Material on record indicates that the Respondent had floated a tender inviting bids for construction of "Construction of Additional Classroom & Labs., at Govt. Sarvodaya Kanya Vidyalaya, (ID: 1309030) & Govt. Boys Senior Secondary School Shakti Nagar No. 1, (ID: 1207019) Delhi-110007. (SH: Civil & Electrical work)".
3. It is stated that the work has been completed on 30.08.2018 and the Petitioner submitted the final bill. Since the dispute arose between the parties regarding payment of final bill and a notice was issued on



29.11.2023 for invoking the dispute under the contract under Clause 25. Since the mechanism provided under the contract failed, a notice was issued on 16.07.2024 seeking for appointment of an arbitrator. There was no response to the said letter and the Petitioner has approached this Court for appointment of an Arbitrator.

4. Notice in the Petition was issued on 16.01.2025. Reply has been filed.

5. Learned Counsel appearing for the Respondent vehemently opposes that the claim is barred by limitation. He states that the final bill had been given in 2019 and therefore the present petition is clearly barred by limitation. After submitting the final bill in the year 2023, the Petitioner did ask for resolution of the disputes, his claim was entertained. There were certain talks of resolution, which had failed. The present case therefore can be a case of a completely time barred claim. In any event, it is open for the Respondent to raise this dispute with the Arbitrator and the Arbitrator can take a decision as to whether the claim is barred by limitation or not. At this stage, this Court cannot come to a conclusion that the claim raised is dead wood or not.

6. The Counsel for the Respondent also clearly contends that a notice had been issued under Section 21 of the Arbitration & Conciliation Act has not been given. The material on record indicates otherwise.

7. The Petitioner first invoked Clause 25 by issuing a letter dated 29.11.2023. The proceedings failed, thereafter a letter dated 16.07.2024 was sent, though it is not specifically under Section 21, however, the essence of the said letter is for seeking for appointment of an Arbitrator. Since the other procedures for resolution of disputes had failed, the essence of this letter is for invoking arbitration.



8. Since there is no appearance on behalf of the Respondents despite issuance of notice, this Court is inclined to appoint an Arbitrator to adjudicate upon the disputes between the parties.

9. Accordingly, Justice Vineet Kothari, Former Acting Chief Justice of Gujarat High Court, (Mob. 9480822552) is appointed as an Arbitrator to adjudicate upon the disputes between the Parties.

10. The arbitration would take place under the aegis of the Delhi International Arbitration Centre (DIAC) and would abide by its rules and regulations. The learned Arbitrator shall be entitled to fees as per the Schedule of Fees maintained by the DIAC.

11. The learned Arbitrator is also requested to file the requisite disclosure under Section 12(2) of the 1996 Act within two weeks of entering on reference.

12. All rights and contentions of the parties in relation to the claims/counter-claims are kept open, to be decided by the learned Arbitrator on their merits, in accordance with law.

13. Needless to say, nothing in this order shall be construed as an expression of this Court on the merits of the contentions of the parties.

14. The present petition stands disposed of in the above terms along with pending application(s), if any.

SUBRAMONIUM PRASAD, J

FEBRUARY 18, 2025

SC