



\$~1

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

+ **ARB.P. 99/2025**

M/S R K GOEL ABHEY KUMAR JAIN

.....Petitioner

Through: **Mr. Jatin Arora, Advocate**

versus

UNIVERSITY OF DELHI

.....Respondent

Through: **Mr. Mohinder J.S. Rupal, Mr. Hardik Rupal, Mr. Aishwaiya Malhotra, Mr. Neetish Pachauri, Advocates.
Mr. Nitin Kumar, AE for DU and Mr. Abhishek Kumar, AE for DU**

CORAM:

HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA

ORDER

% **16.05.2025**

1. Learned counsels for the parties' state that the mediation proceedings have failed between the parties.
2. Learned counsel for the Petitioner states that this Court may appoint an Arbitrator for its claim, which is assessed at Rs. 11.50 lakhs approximately.
3. Mr. Rupal, learned counsel appearing on behalf of the Respondent states that the Respondent has two submissions on the merits of this petition.
 - 3.1 He states that the final bill was settled on 16.02.2022 and payment thereon was made on 31.05.2022.
 - 3.2 He states that however, almost a year later, on 18.02.2023, the Petitioner has raised a bill for the sum of Rs. 8.60 lakhs approximately, invoking Clause 10CA.



3.3 He states that a bare perusal of Clause 10CA would show that there was no cause of action in favour of the Petitioner for raising this bill on account of variation in the year 2023, after the final bill has been settled.

3.4 He states more so, in view of Clause 25, any demand for appointment of the Arbitrator in respect of any claim is to be made by the Contractor within 120 days of receiving the intimation from the Engineer In-Charge that the final bill is ready for payment.

3.5 He states that in the facts of this case, the intimation from the Engineer-In-Charge may be presumed to have been issued on 31.05.2022 (when the final payment was made) and therefore, raising of this claim under Clause 10CA on 18.02.2023 is beyond the 120 days period stipulated in Clause 25.

3.6 He states that it is also a matter of record that the notice invoking Arbitration under Section 21 of the Arbitration and Conciliation Act, 1996 ('Act of 1996') was only made on 24.11.2023.

4. In reply, learned counsel for the Petitioner states that the embargo of 120 days in Clause 25 relied upon by the Respondent is hit by Section 28 of Contract Act, 1872 ('Act of 1872').

4.1 He states that the time period for the Petitioner to raise its claim is within three (3) years from the date on which the cause of action first arose.

4.2 He states that nevertheless these submissions of the Respondent are objections on merits of the claim and fall within the exclusive domain of the Arbitrator.

4.3 He states that since the existence of the Arbitration Agreement is a matter of record, the parties may be referred to Arbitration.

5. This Court has considered the submissions of the parties.



6. The arbitration agreement between the parties is recorded in 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; designs, drawings and instructions herein-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 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 referred to the sole arbitration of the person appointed by the V.C., D.U. in office, at the time of dispute or if there be no V.C. the administrative head of the Delhi University, at the time of such appointment that the arbitrator so appointment. It will be no objection to any such appointment that that the arbitrator so appointed is a University servant, that he had to deal with the matters to which the contract relates and that in the course of his duties as a University servant he had expressed views on all or any of the matters in dispute of difference. The arbitrator to whom the matter is originally referred being transferred or vacating his office or being unable to act for any reason, such head as aforesaid at the time of such transfer, vacation of officer or inability to act, shall appoint another persons to act as arbitrator in accordance with the terms of the contract. Such person shall be entitled to proceed with the reference from the stage at which it was left by his predecessor. It is also a terms of this contract that no person other than a person appointed by VC./Administrative VC. as aforesaid should act as arbitrator and if for any reason, that is not possible the matter is not to be referred to arbitration at all. In all case where the amount of claim in dispute is Rs. 1,00,000.00 and above, the arbitrator shall give the reasons for the award.

It is a term of the contractor that the party invoking arbitration shall specify the dispute or disputes to be referred to arbitration under this clause together with the amount or amounts claimed in respect of each such dispute.

It is also a term of this contract that no person other than a person appointed by Vice Chancellor, Delhi University or the administrative head of the Delhi University, as aforesaid should act as arbitrator and if for any reason that is not possible, the matter shall not be referred to arbitration at all.



It is also a term of this contract that if the contractor does not make any demand for appointment of arbitrator in respect of any claims in written as aforesaid within 120 days of receiving the intimation from the Engineer-in-Charge that the final bill is ready for payment, the claim of the contractor shall be deemed to have been waived and absolutely barred and the Delhi University shall be discharged and released of all liabilities under the contract in respect of these claims.

The arbitration shall be conducted in accordance with the % provisions of the Arbitrator and Conciliation Act, 1996 (26 of 1996) or any statutory modifications or reenactment thereof and the rules made there under and for the time being in force shall apply to the arbitration proceeding under this clause.

It is also a term of the contract that if any fees are payable to the arbitrator these shall be paid equally by the both the parties.

It is also a terms 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 venue of the arbitration shall be such place as may be fixed by the arbitrator in his sole discretion. The fees, if any, of the arbitrator shall, if required to be paid before the award is made and published, he paid half and half by each of the parties. The cost of reference and of the award (including the fees, if any, of the arbitrator) shall be in the discretion of the arbitrator who may direct to any be whom and in what manner, such costs or any part

thereof shall be paid and fix or settle the amount of costs to be so paid.

The arbitrator(s) may from time with consent of the parties enlarge the time for making and publishing the award.

The decision of the Engineer-in-charge regarding quantities of reduction as well as justification thereof in respect of rates for sub slandered work which may be decided will be final and would not be open to arbitration.”

7. The existence of the Arbitration Agreement is apparent and the Petitioner has invoked the said clause vide legal notice dated 24.11.2023.

8. This Court finds merit in the submissions of the Petitioner that the contentions raised by the Respondent to oppose the claims of the Petitioner are on merits and within the exclusive domain of the Arbitrator. The submission of the Petitioner that the 120 days period in Clause 25 would be hit by Section 28 of the Act of 1872 is also no more res-integra in view of



the Judgment of the Supreme Court in **Grasim Industries Limited v. State of Kerala**¹ and of the coordinate bench of this Court in **Sagar Constructions Through Subhash Chand Saini v. Govt. of NCT of Delhi**². This Court, therefore, is satisfied that the petition deserves to be allowed and the parties are referred to Arbitration.

9. In view of the above, the disputes between the parties under the said agreement are referred to the arbitral tribunal consisting of a Sole Arbitrator with the following directions:

- i. Mr. Aseem Chaturvedi, Advocate, (E. No. D/831/2008) (Mob. No. 9899682235) (e-mail: aseem.chaturvedi@khaitanco.com) is appointed as a Sole Arbitrator to adjudicate the disputes between the parties.
- ii. The arbitration will be held under the aegis of the Delhi International Arbitration Centre ('DIAC'). The remuneration of the learned Arbitrator shall be in terms of Schedule IV of the Act of 1996 as amended by DIAC Rules.
- iii. The learned Arbitrator is requested to furnish a declaration in terms of Section 12 of the A&C Act before entering into the reference.
- iv. The Petitioner shall file its statement of claim within six (6) weeks as per the rules of DIAC.
- v. It is made clear that all the rights and contentions of the parties, including as to the merits of the claims raised by the Petitioner, any objection on the arbitrability of the disputes, if available, and/or counter claims, as well as any preliminary objections by either of the parties, are left open for adjudication by the learned arbitrator.
- vi. List the matter before the DIAC, for a preliminary hearing before the learned Arbitrator, on **31.07.2025 at 10:30 A.M.**

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

11. The registry is directed to send a copy of this order to the Secretary,

¹ (2018) 14 SCC 265 at para 11.

² 2021 SCC OnLine Del 4648 at para 14 and 15.



DIAC for information and compliance and the learned Sole Arbitrator.

12. Accordingly, the petition stands disposed of.

13. 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.

MAY 16, 2025/rhc/AM **MANMEET PRITAM SINGH ARORA, J**

[Click here to check corrigendum, if any](#)