



2025:DHC:2149



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **ARB.P. 329/2025**

Date of Decision: **25.03.2025**

IN THE MATTER OF:

M/S KK CONSTRUCTIONS

..... PETITIONER

Through: Mr. Abhishek Pandey and
Mr.Ramesh Pandey, Advocates.

Versus

NEW DELHI MUNICIPAL COUNCIL

.... RESPONDENT

Through: Mr.Amit Saxena, ASC with Mr.Kapil
Dutta, Advocate.

HON'BLE MR. JUSTICE PURUSHAINDRA KUMAR KAURAV

JUDGEMENT

PURUSHAINDRA KUMAR KAURAV, J. (ORAL)

1. The present petition has been filed under Section 11 of the Arbitration and Conciliation Act, 1996 (hereinafter referred as "A&C Act"), seeking the appointment of an Arbitrator to adjudicate upon the disputes which has arisen between the parties.
2. Heard learned counsel appearing on behalf of the parties.
3. The facts of the case would indicate on 29.01.2018, the respondent



invited tenders for the work of improvement of palika kendra building, sub head: providing silicon treatment at the exposed surface of palika kendra building. The petitioner appears to be the successful bidder. The letter of acceptance was issued; and thereafter, an agreement was executed between the parties.

4. As per the case set up by the petitioner, the work was completed and a completion certificate was also issued. The petitioner contends that as per the final bill, the respondent did not make the payment and the petitioner thereafter approached the concerned authority of New Delhi Municipal Corporation (NDMC).

5. Since, no response was received, the petitioner *vide* legal notice dated 26.12.2024 invoked Arbitration Clause 25 of the Agreement. Since, the respondent did not respond to the said notice, therefore, the petitioner has approached this Court by way of the instant petition under Section 11 of the A & C Act.

6. Learned counsel appearing on behalf of the respondent raises various objections regarding the veracity of the claim raised in the instant petition.

7. The Court finds that there exists an arbitration agreement. Clause 25 of the said agreement 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, design, drawings and instructions herein before mentioned and as to the quality of workmanship of 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 dealt with as mentioned hereinafter:

(1) If the contractor considers any work demanded of his 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 or 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 or where there is no Chief Engineer, the (Additional Director General (DE/ADG) 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) shall give the opposing party two weeks for a 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 CE/ADG. 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.

If the Dispute Redressal Committee (DRC) fails to give its decision within the aforesaid period or any party is dissatisfied 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 Chief Engineer, NDMC, In charge of the work or if there be no Chief Engineer, the Additional Director General of the concerned region of CPWD or if there be no Additional Director General, the Director General, CPWD (CE/ADG/DG) for appointment of arbitrator on prescribed proforma as per Appendix XV under intimation to the other party.

Provided that no party shall be represented before DRC by an advocate/ legal counsel etc.

The CE/ADG/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/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 Chairman, NDMC shall appoint the second or Presiding Arbitrator as the case may be.

It is the term of contract that each party invoking arbitration must exhaust the aforesaid mechanism of settlement of the claims/ disputes prior to invoking arbitration.

(ii) Disputes or difference shall be referred for adjudication through arbitration by a Tribunal having sole arbitrator where Tendered amount is Rs.100 Crore or less. Where Tendered Value is more than Rs.100 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 modifications or re-enactment thereof and the rules made there under 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 dispute along with the notice for appointment of arbitrator and giving reference to the decision of the 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 at a level not lower than Chief Engineer (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 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 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 terms of the contract that if any fees are payable to the arbitrator, these shall be paid as per the Act. 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.”

8. It is evident that where there exists an arbitration clause and in the event any dispute has arisen between the parties, there is no impediment in appointing an independent Sole Arbitrator. Reference can be made to the decisions of the Supreme Court in ***Perkins Eastman Architects DPC v. HSCC (India) Ltd.***,¹ ***TRF Limited v. Energo Engineering Projects Ltd.***,² ***Bharat Broadband Network Limited v. United Telecoms Limited.***,³ and ***Interplay between Arbitration Agreements under the Arbitration & Conciliation Act, 1996 & the Indian Stamp Act, 1899, In re***⁴.

9. Taking into consideration the exposition of law which has been laid down by the Supreme Court in various cases that in cases, it can be safely concluded that where the parties have agreed for resolving their disputes by way of the arbitration, the Court need not to conduct detailed enquiry and by

¹ (2020) 20 SCC 760.

² (2017) 8 SCC 377.

³ 2019 SCC OnLine SC 547.



leaving the rights of the parties to be agitated before the Arbitrator, an Arbitrator can be appointed.

10. Having considered the aforesaid position, the Court finds that reserving all rights and contentions of the parties, the matter can be resolved by the Arbitrator in view of Clause 25 of the Agreement. Accordingly, the Court appoints Ms. Shubha Yadav, Advocate (Mob No.+91-9953280076, Email ID- advshubhayadav@gmail.com) as the Sole Arbitrator to adjudicate the dispute between the parties.

11. The Sole Arbitrator may proceed with the arbitration proceedings, subject to furnishing to the parties, requisite disclosures as required under Section 12 of the Arbitration and Conciliation Act, 1996 (hereinafter referred as “A&C Act”).

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

13. The parties shall share the arbitrator's fee and arbitral cost, equally.

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

15. Needless to say, nothing in this order shall be construed as an expression of opinion of this Court on the merits of the controversy between the parties. All rights and contentions of the parties in this regard are reserved.

⁴ 2023 SCC OnLine SC 1666.



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16. Let the copy of the said order be sent to the newly appointed Arbitrator through the electronic mode as well.
17. Accordingly, the instant petition stands disposed of.

MARCH 25, 2025

Nc/@m

PURUSHAINdra KUMAR KAURAV, J

Click here to check corrigendum, if any