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

+ **ARB.P. 1351/2024, I.A. 38092/2024**

MS MP KHAITAN

.....Petitioner

Through: **Mr. Rajat Joneja & Mr. S. M. Ansari,**
Advs.

versus

HSCC INDIA LTD

.....Respondent

Through: **Mr. Harshit Agarwal and Mr.**
Aasheesh Gupta Advs.

CORAM:

HON'BLE MR. JUSTICE JASMEET SINGH

ORDER

08.10.2025

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1. This is a petition filed under Section 11(6) of the Arbitration and Conciliation Act, 1996 seeking appointment of an Arbitrator for adjudication of disputes between the parties.
2. The brief facts are that the respondent invited bids for carrying out balance construction work in Super Speciality Block at North Bengal Medical College, Siliguri, West Bengal *vide* tender dated 14.11.2019. The petitioner submitted its bid application which was accepted by the respondent *vide* letter dated 13.01.2020.
3. Thereafter, the parties executed a Contract dated 05.02.2020 containing the arbitration clause being Clause No. 25 of the General Conditions of Contract 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, design, drawings and instructions 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 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 on any matter in connection with or arising out of the contract or carrying out of the work, to be unacceptable, he shall promptly within 15 days request the authority indicating in schedule 'F' (Reviewing Authority) in writing for written instruction or decision. Thereupon, the Reviewing Authority shall give his written instructions or decision within a period of one month from the receipt of the contractor's letter.

If the Reviewing Authority fails to give his instructions or decision in writing within the aforesaid period or if the contractor is dissatisfied with the instructions or decision of the Reviewing Authority, the contractor may, within 15 days of the receipt of the



Reviewing Authority's decision, appeal to the authority as indicated in schedule 'F' (Appealing Authority) who shall afford an opportunity to the contractor to be heard, if the latter so desires, and to offer evidence in support of his appeal. The Appealing Authority shall give his decision within 30 days of receipt of contractor's appeal. If the contractor is dissatisfied with the decision of the Appealing Authority, the contractor may within 30 days from the receipt of the Appealing Authority's decision, appeal before the Dispute Redressal Committee (DRC) along with a list of disputes with amounts claimed in respect of each such dispute and giving reference to the rejection of his disputes by the Appealing Authority. The Dispute Redressal Committee (DRC) shall give his decision within a period of 90 days from the receipt of Contractor's appeal. The constitution of Dispute Redressal Committee (DRC) shall be as indicated in Schedule 'F'. If the Dispute Redressal Committee (DRC) fails to give his decision within the aforesaid period or any party is dissatisfied with the decision of Dispute Redressal Committee (DRC), 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 Client for appointment of arbitrator on prescribed proforma as per Appendix XV, failing which, the said decision shall be final binding and conclusive and not referable to adjudication by the arbitrator. (ii) Except where the decision has become final, binding and conclusive in terms of Sub Para (i) above, disputes or difference shall be referred for adjudication through arbitration by a sole arbitrator appointed by



the Designated Authority of the Executing Agency, [the arbitrator so appointed is unable or unwilling to act or resigns his appointment or vacates his office due to any reason whatsoever, another sole arbitrator shall be appointed in the manner aforesaid. Such person shall be entitled to proceed with the reference from the stage at which it was left by his predecessor. It is a term of this contract that the party invoking arbitration shall give a list of disputes with amounts claimed in respect of each such dispute along with the notice for appointment of arbitrator and giving reference to the rejection by the Appealing Authority of the appeal. It is also a term of this contract that no person, other than a person appointed by (Designated Authority of the Executing Agency), 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 writing 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 Executing Agency 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 Arbitration and Conciliation Act, 1996 (26 of 1996) / The Jammu and Kashmir Arbitration and Conciliation Act, 1997 (35 of 1997) (as the case may be) or any statutory



modifications or re-enactment thereof and the rules made thereunder and for the time being in force shall apply to the arbitration proceeding under this clause.

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

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 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, be paid half and half by each of the parties. The cost of the 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 by 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.”

4. Since there were disputes between the parties, the petitioner invoked arbitration vide legal notice dated 14.06.2024 and thereafter filed the present



petition.

5. Mr. Bhagat, the learned counsel for the petitioner, states that before filing of the present petition, the arbitral process preceding appointment of an Arbitrator has been duly complied with by the petitioner.

6. I am satisfied that there is a valid arbitration clause between the parties and there are disputes which need to be adjudicated through the arbitral mechanism.

7. Mr. Agarwal, learned counsel for the respondent, has no objection to the appointment of an Arbitrator. He further seeks liberty to move an application before the Arbitrator to implead Ministry of Health and Family Welfare, Union of India as a party to the arbitration proceedings.

8. For the said reasons, the petition is allowed and disposed of with the following directions:

- i) Ms. Shalinder Kaur (Retd. Judge Delhi High Court) (Mob. No.9910384702) is appointed as a Sole Arbitrator to adjudicate the disputes between the parties.
- ii) The arbitration will be held under the aegis and rules of the Delhi International Arbitration Centre, Delhi High Court, Sher Shah Road, New Delhi (hereinafter, referred to as the 'DIAC').
- iii) The remuneration of the learned Arbitrator shall be in terms of DIAC (Administrative Cost and Arbitrators' Fees) Rules, 2018.
- iv) The learned Arbitrator is requested to furnish a declaration in terms of Section 12 of the Act prior to entering into the reference.
- v) It is made clear that all the rights and contentions of the parties, including as to the arbitrability of any of the claim, any other preliminary objection, as well as claims/counter-claims and merits



of the dispute of either of the parties, are left open for adjudication by the learned Arbitrator.

vi) The parties shall approach the learned Arbitrator within two weeks from today.

9. The respondent is at liberty to move an application before the Arbitrator to implead Ministry of Health and Family Welfare, Union of India as a party to the arbitration proceedings, which shall be decided by the Arbitrator in accordance with law.

10. The present petition is disposed of with the aforesaid terms.

JASMEET SINGH, J

OCTOBER 8, 2025/DM