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

+ **O.M.P.(I) (COMM.) 336/2025**

**RCC DEVELOPERS LTD GENERAL CONSTRUCTION CO
JOINT VENTURE**

.....Petitioner

Through: Mr. Manohar Malik, Mr. Abhishek
Misra, Ms. Astha Gumber and Ms. Farah Khan,
Advocates.

versus

NORTHERN RAILWAY

.....Respondent

Through: Ms. Rashmi Malhotra and Mr.
Shalinder Saini, Advocates.

CORAM:

HON'BLE MS. JUSTICE JYOTI SINGH

ORDER

% **20.08.2025**

I.A. 20266/2025 & I.A. 20267/2025

1. Allowed, subject to all just exceptions.
2. Applications stand disposed of.

O.M.P.(I) (COMM.) 336/2025

3. This petition is filed on behalf of the Petitioner under Section 9 of the Arbitration and Conciliation Act, 1996 ('1996 Act') seeking the following reliefs:-

"a. Direct the Respondent to quantify, measure and record in its measurement book the work completed and executed by the Petitioner under the Contract Agreement dated 06.03.2017 emanating from Acceptance letter dated 27.12.2016 for which payments have not been made and release payments for the same;

b. Direct the Respondent to prepare the final bill w.r.t. the Contract Agreement dated 06.03.2017 emanating from Acceptance letter dated 27.12.2016 and release payments for the said final bill;



c. Direct the Respondent to record and measure the additional work executed by the Petitioner and release payment for the same;

d. Direct the Respondent to release the aggregate amount due to the Petitioner under the Price Variation Clause.”

4. At the outset, learned counsel for the Respondent takes an objection to the maintainability of this petition. It is urged that on account of failure of the Petitioner to file Statement of Claim, learned Arbitrator has terminated the mandate in the arbitral proceedings and no steps were taken by the Petitioner thereafter for appointment of a substitute Arbitrator. Since the proceedings stand terminated, Petitioner cannot seek a direction to the Respondent to quantify and measure the work under the Contract Agreement dated 06.03.2017 as an interim measure.

5. Counsel for the Petitioner urges that Petitioner and Respondent entered into an Agreement dated 06.03.2017 for the work of construction of station building, high level passenger platforms at different stations etc., for contractual value of Rs. 28,74,33,035.53/- with completion period of 18 months. Due to various hindrances and delays attributable solely to the Respondent, several extensions had to be granted to the Petitioner to complete the work and scope of work was also subsequently increased. Despite completion of substantial work, Respondent failed to measure, record or release payments, compelling the Petitioner to file a petition under Section 9 of 1996 Act being O.M.P.(I) (COMM.) 352/2021, seeking release of PVC amount of Rs. 1 crore as also for release of the measured and recorded amounts etc. On categorical submission of the Respondent before this Court that amounts shall be released within four weeks of the Petitioner submitting the requisite bills, this petition was withdrawn on 24.11.2021 and on continued default, Petitioner invoked arbitration and filed a petition under



Section 11(6) of 1996 Act being ARB. P. 1213/2021. Sole Arbitrator was appointed by the Court and at the same time, Petitioner continued to carry on and concluded the work. Respondent, however, failed to hand over complete record and release the payments and Performance Bank Guarantee. Completion certificate was also not issued. Petitioner again filed a petition under Section 11(6) of 1996 Act being ARB. P. 519/2024 and Court appointed the earlier Arbitrator on 21.05.2024 to adjudicate disputes arising post-31.05.2022. Since Respondent was not measuring the completed work and recording the same in the measurement book or preparing the final bill and releasing the payments, Petitioner had no option but to seek these reliefs in the present petition.

6. Heard learned counsels for the parties.

7. From plain reading of the petition, it emerges that a contract was executed between the parties on 06.03.2017 in respect of which certain disputes arose. Petitioner filed a petition under Section 9 of 1996 Act in this Court being O.M.P.(I) (COMM.) 352/2021 *inter alia* seeking directions to the Respondent to release the amount upto 33rd R.A. Bill as also the measured and recorded amount for extra work done. This petition was disposed of as withdrawn on 24.11.2021, taking on record the stand of the Respondent that payment shall be released within four weeks of submission of the requisite Bill. ARB. P. 1213/2021 was filed by the Petitioner for appointment of Arbitrator, when disputes were not resolved and vide order dated 07.03.2022, Sole Arbitrator was appointed. It appears that in the meantime, there was again change of scope of work since the work was continuing at site and Petitioner requested for extensions of time without penalty. As per the Petitioner, from time to time, Bills were submitted but



payments were not released by the Respondent. For disputes post-31.05.2022, Petitioner filed ARB. P. 519/2024, seeking appointment of the Arbitrator, which was allowed on 21.05.2024 and the same Arbitrator was appointed in respect of these disputes. Order sheets of the learned Arbitrator filed with the present petition support the stand of the Respondent that despite repeated opportunities, Petitioner did not file the Statement of Claim and insisted on adjourning the proceedings *sine die* till the filing of the claim. At Petitioner's request, proceedings were adjourned *sine die* but revived after 8 weeks. However, Statement of Claim was not filed by the Petitioner. Having no other option and noting that neither Statement of Claim was filed nor a single penny was paid towards Arbitrator's fee and administrative charges of Delhi International Arbitration Centre, learned Arbitrator terminated the mandate. Apparently, no steps have been taken by the Petitioner for appointment of a substitute Arbitrator till date. In these circumstances, it is not understood how the present petition is maintainable seeking directions to the Respondent to quantify and measure the work allegedly completed by the Petitioner in the measurement book and/or prepare the final bill and release the payments. These are reliefs which Petitioner had intended to seek in the arbitral proceedings, in which he did not file the Statement of Claim for months together. The reliefs claimed cannot be granted in the facts and circumstances of this case and the petition is accordingly dismissed.

JYOTI SINGH, J

AUGUST 20, 2025/Shivam