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

+ **ARB.P. 1881/2024**

SH NARESH KUMAR

.....Petitioner

Through: **Mr. Avinash Trivedi and Mr. Rahul Aggarwal, Advocates**

versus

I AND FC DEPARTMENT GOVT OF NCT OF DELHI

.....Respondent

Through: **Mr. Tushar Sannu, SC for GNCTD with Ms. Aparva Kushwah, Advocates**

CORAM:

HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA

ORDER
21.04.2025

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1. This is a petition filed under Section 11(6) of the Arbitration and Conciliation Act, 1996 (herein after “the Act”) seeking appointment of the Sole Arbitrator for adjudication of disputes arising between the parties out of acceptance letter no. F2291690/2018-19/AB-CD-I/12026 dated 08.01.2019 issued by the Respondent department.

2. It is stated that the Petitioner, a government contractor and proprietor of M/s Sunrise Enterprises, was awarded the contract for “*Construction of 05 Nos. Badminton Courts in various Societies/locations in Palam Assembly Constituency*” by the Respondent Department. Pursuant to deposit of performance guarantee, the work commenced on 23.01.2019 and was to be



completed by 22.04.2019. It is stated that due to hindrances attributable to the Respondent and the COVID-19 pandemic, the work was completed on 15.07.2021.

3. The arbitration agreement between the parties is embodied in Clause 25 of the General Conditions of Contract (GCC), which governs the present contract for civil construction work.

4. It is stated that owing to disputes, the Petitioner issued a demand notice invoking Clause 25 of the agreement on 06.10.2023 addressed to the Chief Engineer and copied the same to Executive Engineer as well as Superintendent of the Respondent department. The claims of the Petitioner were enlisted in the said letter.

5. It is further stated that in terms of Clause 25(i) of the agreement, the Petitioner, vide email dated 17.12.2023 addressed to the Chief Engineer sought constitution of a Dispute Resolution Committee ('DRC'). The claims of the Petitioner were enlisted in the said letter. However, Respondent failed to constitute a DRC.

6. It is stated that due to no response from the Respondent to the aforesaid notices, the petitioner sent a demand notice dated 16.08.2024 to the office of the Chief Engineer of respondent, in accordance with the clause 25 of agreement through speed post for appointment of Arbitrator. And, in these facts, the Petitioner has approached this Court for appointment of Sole Arbitrator under Section 11(6) of the Act.

Arguments of the Respondent

7. Mr. Sannu, learned Counsel for the Respondent states that the present petition is not maintainable; since the petitioner has failed to exhaust pre-arbitral mechanism as provided under clause 25 of the Contract/Agreement,



which is mandatory and binding.

8. He further states that the Petitioner vide demand notice dated 06.10.2023 invoked the arbitration clause by addressing it to Chief Engineer, however, the contract's Clause 25 mandates that the petitioner herein can only invoke the arbitration clause by first writing the letter to Superintending Engineer. He states that the said procedure is mandatory and not directory. (Re: **Sushil Kumar Bhardwaj v. Union of India**¹).

9. He further states that the present petition is barred by limitation since the work was completed on 15.07.2021, which is an admitted fact, and thus, the limitation for invoking the arbitration clause expired on 15.07.2024. It is stated that the present petition was filed in November, 2024 thereby barring the claims by limitation.

Decision

10. Notice in the present petition was issued vide order dated 10.12.2024.

11. The Respondent has raised two contentions to oppose the present petition. First, the Respondent contends that the mechanism provided in clause 25 has not been invoked as the notice was first not addressed to the Superintending Engineer and vide notice dated 06.10.2023 was straightaway addressed to the Chief Engineer. This contention of the Respondent is without any merits and is contrary to the record. The notice dated 06.10.2023 at paragraph 2 records that a notice enlisting the claims of the Petitioner was first issued to the Superintending Engineer on 28.02.2023 and since no response was received, the Petitioner issued a subsequent notice dated 06.10.2023 addressed to the Chief Engineer. Pertinently, the subsequent notice is duly copied to the Superintending Engineer as well.



The Respondent has not disputed the receipt and the contents of the notice dated 06.10.2023, to the extent that it refers to the previous notice dated 28.02.2023. In the considered opinion of this Court, in view of the earlier notice dated 28.02.2023 and the subsequent notice dated 06.10.2023, the contention of the Respondent that clause 25 has not been duly invoked is without any merits.

12. This brings the Court to the second objection of the Respondent vis-à-vis limitation. The Respondent admits in its written submissions that the work was completed on 15.07.2021 and the final bill was paid on 23.05.2023. The Petitioner as per record issued first letter on 28.02.2023 raising its disputes and/or claims addressed to the Superintending Engineer followed by the notices dated 06.10.2023 and 17.12.2023 invoking arbitration. It is well settled that for the purposes of limitation it is the notice invoking arbitration issued under Section 21 of the Act of 1996 which determines the issue of limitation. In the facts of this case, prima facie the Petitioner invoked arbitration within the period of limitation. Therefore, this contention of the Respondent cannot be the basis of opposing appointment of Arbitrator. However, the objection of limitation is left open and Respondent can raise the same objection before the learned Arbitrator.

13. A perusal of Clause 25 of the agreement shows that there exists a valid arbitration agreement between the parties and the said clause has been duly invoked by the Petitioner vide notices dated 06.10.2023, 17.12.2023 and 16.08.2024.

14. The value of the claim is Rs. 16 lakhs approximately, therefore, an Advocate may be appointed as an Arbitrator. The Arbitration will be

¹ (2009 SCC OnLine Del 4355)



conducted under the aegis of Delhi International Arbitration Centre ('DIAC').

15. In view of the above, the disputes between the parties under the said agreement are referred to the arbitral tribunal with the following directions:

- a) **Mr. Namit Suri, Advocate** (Mob. No. 9582410211, e-mail id – namit.suri@lexindis.com) is appointed as the Sole Arbitrator to adjudicate the disputes between the parties.
- b) The arbitration will be held under the aegis of, and as per rules of the DIAC. The remuneration of the learned Arbitrator shall be in terms of Schedule IV of the Act of 1996 or as the parties may agree.
- c) The learned Arbitrator is requested to furnish a declaration in terms of Section 12 of the Act of 1996 before entering into the reference.
- d) List the matter before the Delhi International Arbitration Centre, Delhi High Court, Sher Shah Road, New Delhi for a preliminary hearing on 26.05.2025 at 10:30 A.M.
- e) The Petitioner shall file its statement of claim within four (4) weeks as per the rules of DIAC.
- f) It is made clear that all the rights and contentions of the parties, including as to the arbitrability of any of the claims and/or counter claims, any other preliminary objection, as well as claims on merits of the dispute of either of the parties, are left open for adjudication by the learned arbitrator.

16. With the aforesaid direction, the petition stands disposed of.

17. The registry is directed to send a copy of this order to Secretary, DIAC and the Sole Arbitrator.

18. 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.

MANMEET PRITAM SINGH ARORA, J
APRIL 21, 2025/rhc/akp

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