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

% ***Date of decision: 10.11.2021***

\+ ARB.P. 900/2021

M/S ASHUTOSH BUILDERS CONTRACTORS AND ENGINEERS ..... Petitioners

Through: Ms.Seema Singh, Adv.

Versus

UNION OF INDIA & ORS. ..... Respondents

Through: Ms.Arti Bansal, Adv.

CORAM:
HON'BLE MR. JUSTICE SURESH KUMAR KAIT

J U D G M E N T ***(oral)***

1. Petitioner has filed the present petition under the provisions of Section 11(6) of the Arbitration and Conciliation Act, 1996 seeking appointment of sole arbitrator for adjudication of all the disputes with respondents in terms of arbitration clause 70 of IAFW 2249.

2. Petitioner is a contractor and has been engaged by the respondent on several occasions for carrying out various constructions and other activities of respondent. Respondent is an establishment fully controlled and supervised by the Ministry of Defence, Union of India and is a state under

Article 12 of the Constitution of India. Respondent no.1 is Union of India through Engineer in Chief (E-IN-C) of the Wing of Army for carrying out works of infrastructure. Respondent nos.2, 3 & 4 are subordinate offices to respondent no.1.

3. Petitioner was awarded the acceptance letter of the contract agreement vide letter dated 28.06.2019 for the work "CA NO.**CWE/WEST-02/2019-20;SPL** REPAIR OF ROMNEY HUTS T-156,T-165,T-166,T-167,T-168 AND T-169 OF CENTRAL STORAGE FACILITY AT CVD UNDER GE (WEST)DELHI CANTT.-10" to the tune of Rs.31,19,233/-.

4. Thereafter, respondent no.4 issued work order dated 02.07.2019 to the petitioner wherein date of commencement was mentioned as 12.07.2019 and date of completion was mentioned as 11.01.2020. Upon this, petitioner firm issued a letter dated 26.07.2019 requesting to handover the complete vacant site and thereafter, petitioner time and again sent letters dated 13.08.2019, 09.09.2019 and 21.09.2019 requesting to handover Shed No. T-156, T-167 & T-165.

5. Subsequently, again petitioner sent letter on 05.12.2019 and stated that Hon'ble Supreme Court vide order dated 04.11.2019 has enforced the ban upon the construction activities carried in Delhi. He also stated that the

work could only be started after the ban is uplifted and requests for extension of time.

6. In response to the abovementioned letter, respondent no.4 vide letter dated 20.12.2019 stated that the Hon'ble Supreme Court has given relaxation in time for construction activities from 09.12.2019 and also alleged that no activity can be seen at the site and stated to levy compensation as time being essence of contract and granted two weeks time to cancel the contract at certain risk and cost.

7. Thereafter petitioner again sent a letter dated 09.01.2020 to respondent no.4 in response to its letter dated 20.12.2019 expressing delay attributable to the respondent while proceeding with the execution of the work at site, delay in handing over site, delay in taking decision at paint, delay decision in installing the CG sheets, etc.

8. It is averred on behalf of the petitioner that despite of the due date of completion of work as per work Order No.1 which was expired on 11.01.2020, vacant site of the shed T-165 was not handed over. Thereafter petitioner again sent letter dated 22.01.2020 wherein stated that respondent no.4 has not granted extension of time to the petitioner and on the other side, notice of levying compensation was sent but complete vacant site was not

handed over to the petitioner even after lapse of due date of completion of contract work. Respondent no.4 in response to the petitioner's abovementioned letter sent letters dated 20.08.2020 and 21.08.2020 stating that CGI sheet of M/s Bhushan has developed defect of rust from many places.

9. Upon this, petitioner sent a letter to respondent no.5 as well as TATA Steel (manufacturer) along with letter of respondent no.4 to replace the steel/material as rust can be seen on CGI sheet.

10. Petitioner being aggrieved with the high handed attitude of respondent no.4 issued legal notice on 24.10.2020 stating that site T-165 has not been handed over after lapse of 10 months from the due date of completion and also failure in providing the extension despite of numerous requests.

11. During the course of hearing, learned counsel for the petitioner informed that the petitioner firm had previously sent notice for conciliation and thereafter sent a notice invoking arbitration vide notice dated 17.07.2021 under condition 70 of IAFW and requested for appointment of a sole arbitrator to adjudicate the disputes between the parties.

12. Respondents have filed reply to the present petition wherein it has been stated that as per the Agreement the serving officer having requisite

qualification has to be appointed as an arbitrator to adjudicate the disputes solely by the appointing authority i.e. Chief Engineer Delhi Zone, Delhi Cantt.

13. Both sides have been heard and record of this case has been perused. However, the Hon'ble Supreme Court in ***Perkins Eastman Architects DPC & Anr. vs. HSCC (India) Ltd. 2019 SCC Online SC 1517*** has categorically stated that no single party can be permitted to unilaterally appoint the Arbitrator, as it would defeat the purpose of unbiased adjudication of dispute between the parties. The aforesaid decision in ***Perkins (Supra)*** has been followed by a Coordinate Bench of this Court in ***Proddatur Cable TV Digi Services Vs. Citi Cable Network Limited: (2020) 267 DLT 51.*** Thus, the Arbitrator either has to be appointed with the consensus of the parties or by this Court.

14. During the course of hearing, learned counsel appearing for the parties pressed that this Court may appoint Arbitrator to adjudicate the disputes pending amongst the parties.

15. Accordingly, **Mr.P.B. Vijay, (Civil Engineer) (Mobile: 9810543411)** is appointed sole Arbitrator to adjudicate the disputes between the parties.

16. The arbitration shall be conducted under the Delhi International Arbitration Centre (DIAC). The fee of the Arbitrator shall be in accordance with the schedule of fees prescribed under the Delhi International Arbitration Centre (DIAC) (Internal Management) Rules and Delhi International Arbitration Centre (Administrative Cost and Arbitrators' Fees) Rules, 2018.

17. The learned Arbitrator shall ensure compliance of Section 12 of Arbitration and Conciliation Act, 1996 before commencing the arbitration.

18. The present petition is accordingly disposed of.

19. Pending application also stands disposed of

20. A copy of this order be sent to the learned Arbitrator for information.

(SURESH KUMAR KAIT)
JUDGE

NOVEMBER 10, 2021
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