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

+ ARB.P. 8/2021

NEW OM CONSTRUCTION CO. .... Petitioner  
Through Mr. Ankit Gupta, Adv.

versus

UNION OF INDIA .... Respondent  
Through Mr. Vishal Bakshi, Adv.

**CORAM:**

**HON'BLE MR. JUSTICE C. HARI SHANKAR**

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**O R D E R(ORAL)**

**15.04.2021**

**(video-conferencing)**

**C. HARI SHANKAR. J.**

**ARB.P. 8/2021**

1. Mr. Vishal Bakshi, learned counsel for the respondent, has no objection to an arbitrator being appointed, as sought by the petitioner, in the present petition filed under Section 11(6) of the Arbitration and Conciliation Act, 1996 (“1996 Act”), subject to the arbitrator being a person holding an engineering qualification.

2. Mr. Ankit Gupta, learned counsel for the petitioner, does not oppose the request.

3. The dispute between the parties emanates out of a Work Order dated 31<sup>st</sup> October, 2013, placed by the respondent on the petitioner.

Paras 3 to 5 of the present petition capture the disputes between the parties and may be reproduced thus:

“3. That in the month of October 2013, Chief Engineer, (AF) Palam, awarded the work of Construction of Provn of Security Infrastructure for Sensitive Locations at AF STN NAL to the Petitioner Firm in CA No. CEWAC/NAL-55/2013-14. The approx. value of the work under contract was Rs. 4,09,29,241/- (Rupees Four Crore Nine Lacs Twenty Nine Thousand Two Hundred Forty One Only). Ninety Eight Paise). The work was to be commenced on 10.11.2013 and to be completed on 09.02.2015 within 15 months.

4. In order to complete the work within stipulated period of 15 months, the Petitioner Firm geared up for execution of the work by brought tools, heavy machines, raw materials at site, the Engineers, Experts, Consultant and Labourers were deployed at site.

5. Though the Petitioner firm was always ready and willing to perform its contractual obligations, but it was prevented by the department of the Respondent from such performance by scope of work was not finalized; the Respondent incorporated various changes in the contract time to time; the Respondent failed in fixing a new time frame and reimbursement of losses suffered by the Petitioner firm; RAR bills, final bill and final payment has not been done till date; Due to locking of funds, the Petitioner Firm was losing heavily on account of restriction of turnover and forced to pay interest on locked capital; Decisions of changing of work were pending due to difference between CFA/users and MES as users wanted changes from contract already entered; the Respondent tried to arm-twist the Petitioner Firm to accept all changes without claim or protest, however the Petitioner Firm refused the same, then for a long time there was no decision, neither the Petitioner Firm were being given GO-AHEAD to incorporate changes nor the Petitioner Firm were being allowed to finish the work as per original contract; due to inordinate delay and any compromise on pricing of additional work the Petitioner Firm suffered huge losses, therefore the work could not be

completed within stipulated period and the same was completed in the extended period upto 17.06.2019. The department of the Respondent issued completion certificate to the Petitioner Company in respect of the work in question.”

4. The contract with the Union of India, being governed by the General Conditions of Contracts, Clause 70 of which provides for resolution of the disputes by arbitration. The relevant part of the Clause 70 reads thus:

**“70. Arbitration** -All disputes, between the parties to the Contract (other than those for which the decision of the C.W.E. or any other person is by the Contract expressed to be final and binding) shall, after written notice by either party to the Contract to the other of them, be referred to the sole arbitration of a [Serving Officer having degree in Engineering or equivalent or having passed final/ direct final Examination of sub-Division li of Institution of Surveyor (India) recognised by the Govt. of India] to be appointed by the authority mentioned in the tender documents.”

5. The petitioner sent a notice invoking arbitration for resolution of the disputes, on 19<sup>th</sup> August, 2020. No response having been provided by the respondent thereto, the petitioner has approached this Court under Section 11(6) of the 1996 Act.

6. As noted towards the commencement of this order, Mr. Bakshi, learned counsel of the respondent, does not oppose the request for referring the disputes to arbitration, but draws my attention to the fact that Clause 70 contemplates the arbitrator, as being a person “having degree in engineering or equivalent”. Though this stipulation would apply only if Clause 70 were to be implemented by the respondent, Mr. Gupta, learned counsel for the petitioner, does not oppose the

matter being referred to an arbitrator, having a degree in engineering.

**7.** Accordingly, this Court refers the disputes between the parties to Mr. K.N. Agarwal, (Retd. DG, CPWD), as the arbitrator to arbitrate thereon. Details of the learned arbitrator are as under:

Phone No.: 9818310931

Email ID. : kn.agrawal@gmail.com

**8.** The learned arbitrator would be entitled to fees in accordance with Fourth Schedule to the 1996 Act.

**9.** The learned arbitrator would also furnish the requisite disclosure under Section 12(2) of the 1996 Act within a week of entering on the reference.

**10.** All issues of fact or law, are left open to be agitated before the learned arbitrator.

**11.** This petition stands disposed of as above.

**C.HARI SHANKAR, J**

**APRIL 15, 2021**

*r.bararia*