

# Rajiv Aggarwal vs Delhi Transport Infrastructure ... on 18 December, 2020

**Author: Rekha Palli**

**Bench: Rekha Palli**

Via video

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IN THE HIGH COURT OF DELHI AT NEW DELHI

ARB.P. 376/2020

RAJIV AGGARWAL

Through

.....  
Mr.Anshul Mittal, Adv.

versus

DELHI TRANSPORT INFRASTRUCTURE

DEVELOPMENT CORPORATION LTD.

..... Respondent

Through Mr.Amiet Andlay, Adv.

CORAM:

HON'BLE MS. JUSTICE REKHA PALLI

ORDER

% 18.12.2020

1. This is a petition under Section 11 of the Arbitration & Conciliation Act, 1996 (hereinafter referred to as "the Act"), seeking appointment of an Arbitrator for adjudication of disputes which have arisen between the parties in relation to the work order dated 10.12.2015.

2. Learned counsel for the petitioner submits that though some of the disputes arising out of the same work order have already been the subject matter of an earlier arbitration, the 8 claims now being sought to be raised by the petitioner could not be raised during the earlier arbitration proceedings, as the earlier arbitration proceedings which led to the passing of the Award dated 23.05.2019 were in relation to the disputes prior to raising of the Final Bill. He submits that now as the Final Bill has been submitted, the present dispute including the issue of return of performance bank guarantees, are required to be adjudicated through arbitration.

3. The petition has been vehemently opposed by learned counsel for the respondent, who submits that once the petitioner has already challenged the Award dated 23.05.2019 by way of a petition under Section 34 of the Act, which is still pending adjudication before the learned District Judge, Rohini Courts, Delhi; the petitioner cannot, now be allowed to raise these claims by initiating fresh arbitration proceedings. By drawing my attention to the Award dated 23.05.2019, he submits that even otherwise, Claim No.1 now sought to be raised by the petitioner is a fallout of the second running bill and, therefore, cannot be permitted to be raised at this stage.

4. Having considered the submissions of the parties and perused the Award dated 23.05.2019, I find that except for Claim No.1, which was undoubtedly a fallout of the second running bill, all other

claims could have been raised only after the submission of the Final Bill. In fact, the learned Arbitrator had specifically rejected the claims for release of the performance guarantee and security deposits by observing the same could be raised only after the submission of the Final Bill.

5. Even in respect of Claim No.1, learned counsel for the petitioner has sought to contend that the amount claimed therein is based on the part rate, which claim, in terms of the agreement, could be raised only after the submission of the Final Bill. In these circumstances, I find no merit in the respondent's objection that the petitioner is estopped from invoking arbitration regarding these claims.

6. It is also an admitted position that despite the petitioner's request, the respondent has failed to appoint an arbitrator and therefore, the petition is, accordingly, allowed by appointing Mr. S.C. Vasudeva, Engineer, Former Addl. D.G., CPWD, (Mob: 9810182531) as the sole Arbitrator for adjudication of the following claims of the petitioner to the learned Arbitrator:-

Claim no.1 A sum of Rs. 9,30,089/- on A/c of Work executed and Measured but not paid  
Claim no. 2 A sum of Rs. 6,37,5701- on A/c of Release of Performance Guarantee in the shape of fixed deposit receipts no. 494143.

Claim no. 3 A sum of Rs. 5,47,3951- on A/c of Release of Security Deposit including EMD.

Claim no.4 A sum of Rs. 67,8031- on A/c of damages on Account of Escalation as per Clause 10C of the Agreement  
Claim no.5 A sum of Rs. 1,38,22,697/- on A/c of Loss of profit suffered due to prolongation of Contract & Incentive/ Bonus for early completion  
Claim no.6 A sum of Rs. 26,97,838/- on A/c of Applicable GST on all amounts to be paid after 1.7.2017 and on Amount A awarded by Arbitrator as applicable on the Date of Awarded which is to be decided base on the Award  
Claim no.7 A sum of Rs. 36,67,825.92 on A/c of interest @18% p.a. on all due amount from the date of payment due till the date of payment  
Claim no.8 A sum of Rs. 5,00,000 on A/c of cost of proceedings plus the fee to be Paid to arbitrator and all other incidental charges on ale of cost of proceedings.

7. It is, however, made clear that insofar as Claim No.1 is concerned, it will be open for the respondent to raise an objection that the said claim already stands rejected, which aspect will be duly considered by the learned Arbitrator.

8. Before commencing proceedings, learned Arbitrator will ensure compliance of Section 12 of the Act. The fee of the learned Arbitrator will be determined in accordance with Schedule IV of the Act.

9. It is made clear that this Court has not expressed any opinion on the rival submissions of the parties on merits and, therefore, it will be open for the learned Arbitrator to consider the effect of the pending challenge of the petition to the Award dated 23.05.2019.

10. A copy of this order be sent to the learned Arbitrator though electronic means.

11. The petition stands disposed of in the aforesaid terms.

REKHA PALLI, J DECEMBER 18, 2020/aa