

Ravi Kapoor vs Govt. Of Nct Of Delhi (Public Works ... on 19 July, 2021

Author: Sanjeev Narula

Bench: Sanjeev Narula

\$~2 (2020)

* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ ARB.P. 164/2020

RAVI KAPOOR

..... Petitioner

Through: Mr. Avinash Trivedi and Ms. Ritika
Trivedi, Advocates.

versus

GOVT. OF NCT OF DELHI (PUBLIC WORKS DEPARTMENT)

..... Respondent

Through: Mr. Gautam Narayana ASC for
GNCTD with Mr. Adithya Nair,
Advocate.
Mr. Rishikesh Kumar, ASC for
GNCTD, with Mr. Premsagar Pal,
Advocate.

CORAM:

HON'BLE MR. JUSTICE SANJEEV NARULA

ORDER

% 19.07.2021

[VIA VIDEO CONFERENCING]

1. The Petitioner in this present petition under Section 11(6) of the Arbitration and Conciliation Act, 1996 seeks appointment of a Sole Arbitrator in terms of Clause 25 of the General Conditions of Contract (GCC), incorporated by way of reference under the Agreement bearing no. 111/EE/PWD/NW B-1/2017-18 which has been executed between the parties herein, consequent to the Acceptance Letter dated 30th August, 2017 for the work of "A/R & M/O to District Court Rohini, Delhi during 17-18 (SH providing annual maintenance of gym equipments in judges de-stress room at District Court, Rohini Delhi), (2nd call)". The said arbitration clause reads as under:

"25. Settlement of Disputes & Arbitration Except where otherwise provided in the Contract all questions and disputes relating to the meaning of the specifications, design, drawings and instructions herein before mentioned and as to the quality of workmanship or materials used on the work or as to any other question, claim, right, matter or thing whatsoever in any way arising out of or relating to the Contract, designs, drawings, specifications, estimates, instructions, orders or these conditions or otherwise concerning the works or the execution or failure to execute the same whether arising during the progress of the work or after the cancellation,

termination, completion or abandonment thereof shall be dealt with as mentioned hereinafter:

(i) If the Contractor considers any work demanded of him to be outside the requirements of the Contract, or disputes and drawings, record or decision given in writing by the Engineer on any matter in connection with or arising out of the Contract or carrying out of the work, to be unacceptable, he shall promptly within 15 days request the superintending engineer shall give his written instructions or decision within a period of one month from the receipt of the Contractor's letter.

If the superintending engineer fails to give his instructions or decision in writing within the aforesaid period or if the Contractor is dissatisfied with the instructions or decision of the superintending engineer, the Contractor may, within 15 days of the receipt of the superintending engineer decision, appeal to the chief engineer who shall afford an opportunity to the Contractor to be heard, if the latter so desires, and to offer evidence in support of his appeal. The Chief Engineer shall give his decision within 30 days of receipt of contractor's appeal. If the Contractor is dissatisfied with this decision of the Chief Engineer, the contractor may within 30 days from the receipt of the Chief Engineer decision, appeal before the Dispute Redressal Committee (DRC) along with a list of disputes with amounts claimed in respect of each such dispute and giving reference to the rejection of his disputes by the Chief Engineer. The Dispute Redressal Committee (DRC) shall give his decision within a period of 90 days from the receipt of Contractor's appeal. The constitution of Dispute Redressal Committee (DRC) shall be as indicated in Schedule 'F'. If the Dispute Redressal Committee (DRC) fails to give his decision within the aforesaid period or any party is dissatisfied with the decision of Dispute Redressal Committee (DRC), then either party may within a period of 30 days from the receipt of the decision of Dispute Redressal Committee (DRC), give notice to the Chief Engineer for appointment of arbitrator on prescribed proforma as per appendix XV, failing which the said decision shall be final binding and conclusive and not referable to adjudication by the arbitrator.

It is the term of contract that each party invoking arbitration must exhaust the aforesaid mechanism of settlement of claims/disputes prior to invoking arbitration.

(ii) Except where the decision has become final, binding and conclusive in terms of Sub Para (I) above, disputes or difference shall be referred for adjudication through arbitrator by a sole arbitrator appointed by the chief engineer, CPWD, in charge of the work there be no chief engineer, the additional director general, the director general of the concerned regional work CPWD or if there be no additional director general, the director of general of work, CPWD, if the arbitrator so appointed is unable or unwilling to act or resigns his appointment vacates his office due to any reason whatsoever, another sole arbitrator shall be appoint in the manner aforesaid. Such person shall be entitled to proceed with the reference from the stage at which it was left by his predecessor.

It is a term of this Contract that the party invoking arbitration shall give a list of disputes with amount claimed in respect of each such dispute along with the notice for appointment of arbitrator and giving reference to the rejection by the chief engineer of the appeal.

It is also a term of this Contract that no person other than a person appointed by such Accepting Authority as aforesaid should act as arbitrator and if for any reason that is not possible, the matter shall not be referred to arbitration at all. It is also a term of this Contract that if the Contractor does not make any demand for appointment of arbitrator in respect of any claims in writing as aforesaid within 120 days of receiving the intimation from the Engineer-in-Charge that the final bill is ready for payment, the claim of the Contractor shall be deemed to have been waived and absolutely barred and the Employer shall be discharged and released of all liabilities under the Contract in respect of these claims.

The arbitration shall be conducted in accordance with the provisions of the Arbitration and Conciliation Act, 1996 (26 of 1996) or any statutory modifications or reenactment thereof and the rules made there under and for the time being in force shall apply to the arbitration proceeding under this clause, except for cases falling under para 2(i) or (ii). It is also a term of this Contract that the arbitrator shall adjudicate on only such disputes as are referred to him by the appointing authority and give separate award against each dispute and claim referred to him and in all cases where the total amount of the claims by any party exceeds Rs. 1,00,000/- the arbitrator shall give reasons for the award. It is also a term of the Contract that if any fees are payable to the arbitrator, these shall be paid equally by both the parties.

It is also a term of the Contract that the arbitrator shall be deemed to have entered on the reference on the date he issues notice to both the parties calling them to submit their statement of claims and counter statement of claims. The venue of the arbitration shall be such place as may be fixed by the arbitrator in his sole discretion. The fees, if any, of the arbitrator shall, if required to be paid before the award is made and published, be paid half and half by each of the parties. The cost of the reference and of the award (including the fees, if any, of the arbitrator) shall be in the discretion of the arbitrator who may direct to any by whom and in what manner, such costs or any part thereof shall be paid and fix or settle the amount of costs to be so paid."

2. Mr. Gautam Narayan, learned ASC for the GNCTD, does not dispute the existence of the Arbitration Agreement or the invocation thereof. Further, he very fairly states that in view of the judgment of the Supreme Court in Perkins Eastman Architects DPC & Ors. v. HSCC (India) Ltd., AIR 2020 SC 59, the Respondent does not have the right to make unilateral appointment.

3. He however suggests that the Court may consider appointing an Arbitrator from the list of Arbitrators as mentioned in Annexure-A accompanying the reply to the petition. Mr. Narayan further states that he has no objection if the Petitioner was to select a name from the said list.

4. Mr. Avinash Trivedi, learned counsel for the Petitioner is agreeable and suggests the name of Mr. A.K. Singhal (Retd.) DG (W), CP, which finds a mention in the list.

5. Accordingly, the present petition is allowed. Mr. A.K. Singhal (Retd.) DG (W), CP is appointed as the Sole Arbitrator to adjudicate the disputes between the parties arising out of the agreement no. 111/EE/PWD/NW B-1/2017-18.

6. The parties are directed to appear before the learned Arbitrator as and when notified. This is subject to the learned Arbitrator making the necessary disclosure under Section 12(1) of the Act and not being ineligible under Section 12(5) of the Act.
7. The learned Arbitrator will be entitled to charge his fees in terms of the provisions of the Fourth Schedule appended to the Act.
8. It is clarified that the Court has not examined any of the claims of the parties, and all their rights and contentions on merits are left open. Both the parties shall be free to raise their claims / counter-claims before the learned Arbitrator in accordance with law.
9. The learned Arbitrator will conduct the proceedings under the aegis of Delhi International Arbitration Centre.
10. In view of the above, the present petition is allowed and stands disposed of.

SANJEEV NARULA, J JULY 19, 2021 nd