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

% **Date of decision: 27.03.2026**

+ ARB.P. 1858/2025

ASHWANI GARG

.....Petitioner

Through: Mr. Avinash Trivedi & Mr.
Rahul Aggarwal, Advs.

versus

DELHI TOURISM AND TRANSPORTATION

DEVELOPMENT CORPORATION LTDRespondent

Through: Mr. Gyanendra Kumar, Adv.

CORAM:

HON'BLE MR. JUSTICE AVNEESH JHINGAN

AVNEESH JHINGAN, J. (ORAL)

1. The present petition is filed under Section 11(6) of the Arbitration and Conciliation Act, 1996 (for short 'the Act') for appointment of an arbitrator.

2. The brief facts are that the petitioner was awarded a works contract for upgradation and face-lifting work of a government school at Dr. Ambedkar Nagar, Sector-5, New Delhi vide Letter of Acceptance (for short 'LoA') dated 03.02.2016. The project was to be completed within 240 days but was actually completed on 20.06.2018. Time was extended by the respondent on 12.03.2019 without levying liquidated damages. The final bill was paid on 30.08.2019. On 31.08.2019, the petitioner addressed a communication to the Executive Engineer (SP) stating that claims inter alia for escalation in



prices under clauses 10C and 10CA of the contract were pending.

2.1 On 05.12.2023, the petitioner approached the Executive Engineer (SP) in terms of clause 25 of the General Conditions of Contract (for short 'GCC') however, no response was received. On 19.02.2024, the petitioner addressed a letter to the Chief Project Manager regarding the pending disputes and sought reconciliation. On 04.05.2024, a request was made by the petitioner for formation of a Dispute Redressal Committee (for short 'DRC') as provided under clause 25 of the GCC. Thereafter, a notice under Section 21 of the Act was issued on 15.07.2024 and hence, the present petition.

3. Before proceeding further, it would be relevant to reproduce the clause 25 of the GCC providing for settlement of dispute through arbitration.

“25. Settlement of Dispute & 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:

1) 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 (DEC) 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.

2) Except where the decision has become final, binding and conclusive in terms of Sub Para (1) 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.”

4. Learned counsel for the respondent raises an issue that the claim is time-barred. The contract was completed in 2018 and invocation of arbitration proceedings was on 15.07.2024. The contention is that the escalation claim could have been made during the contract period and



not thereafter.

5. Learned counsel for the petitioner submits that the petitioner availed the remedies provided under clause 25 of the GCC before invoking arbitration. It is emphasized that the Supreme Court in the case of **In Re: Cognizance for Extension of Limitation, Suo Motu Writ Petition (C) No. 3/2020**, held that for the purpose of counting the period of limitation, due to the covid-19 pandemic the period from 15.03.2020 to 28.02.2022 is to be excluded.

6. The contention that this six-year gap between completion of the contract and invocation of arbitration renders the claim time-barred is prima facie ill-founded.

7. It is undisputed that the final bill was paid on 30.08.2019. At that time it transpired that the claim of the petitioner for escalation in prices had not been considered while clearing the final bill. On the very next day i.e. 31.08.2019, the petitioner apprised the Executive Engineer (SP) that the claims inter alia under clauses 10C and 10CA were pending. Clause 25 provides the procedure to be adopted before invoking arbitration. It is further stipulated that each party before invoking arbitration must exhaust the mechanism for settlement of claims. The petitioner approached the respondent on 05.12.2023, 19.02.2024 and 04.05.2024. On failure of the respondent to respond to the mechanism for settlement of claims, the notice dated 15.07.2024 was issued invoking arbitration.

8. The only issue that remains is the time period between the



payment of the final bill on 30.08.2019 and the first communication for pre-arbitration mechanism on 05.12.2023. The Supreme Court in **In Re: Cognizance for Extension of Limitation** (supra) considering the pandemic directed exclusion of the period from 15.03.2020 to 28.02.2022 for computing limitation. With the exclusion of this period the notice dated 15.07.2024 shall be within three years from the date of final payment.

9. At the referral stage, the court cannot go into the merits of the case and hence the objection of the learned counsel for the respondent that the claim made by the petitioner has no merits as it was made after the contract concluded is not dilated upon. There is an arbitration clause agreed between the parties. The respondent failed to respond to the notice issued under Section 21 of the Act.

10. The petition is allowed by appointing Mr. Kanwal Jeet Arora, District and Sessions Judge (Retd.) (Mobile No. 9910384733), as the sole arbitrator for adjudication of the disputes which have arisen between the parties.

11. It is clarified that the observations made hereinabove are only for the purpose of deciding the petition under Section 11(6) of the Act. The arbitrator shall proceed with the claims and counter-claims without being influenced by the observations of this Court.

12. Arbitral proceedings will be held under the aegis of Delhi International Arbitration Centre (DIAC). Fee of the Arbitrator shall be fixed as per fee schedule.



13. Before entering upon reference, the learned Arbitrator will comply with Section 12 of the Act.

14. It is made clear that since this Court has not expressed any opinion on the merits of the rival claims of the parties and it will be open for the parties to file their respective claims/counter claims before the learned Arbitrator which will be considered in accordance with law.

15. A copy of this order be forwarded to the learned Arbitrator for information.

AVNEESH JHINGAN, J

MARCH 25, 2026

Ch

Reportable:- **Yes**