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IN THE HIGH COURT OF DELHI AT NEW DELHI*Date of decision: 9th May, 2024*

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ARB.P. 59/2024

M/S. MAGO CONSTRUCTION PVT. LTD. Petitioner

Through: Mr. Modassir H. Khan and Ms. Shruti
Kapur, Advs.

versus

UNION OF INDIA & ORS. Respondents

Through: Mr. Bhagvan Swarup Shukla & Mr.
Adarsh Tiwari, Advs. (M:
9810763691)**CORAM:****JUSTICE PRATHIBA M. SINGH****Prathiba M. Singh (Oral)**

1. This hearing has been done through hybrid mode.
2. The present petition has been filed by the Petitioner under Section 11(6) of the Arbitration and Conciliation Act, 1996 (*hereinafter 'the Act'*) seeking appointment of the Sole Arbitrator to adjudicate the disputes between the parties. The Petitioner was awarded a tender for provision of work services for infrastructure for MLH at AF Station, Suratgarh (Hanger and Maintenance Complex) in 2011 vide Contract Agreement bearing CA No, CEWAC-74/2010-2011 dated 30th August, 2011. The works are stated to have been carried out and the final bill was raised by the Petitioner on 9th October, 2014. However, thereafter there has been several correspondences between the parties in respect of the payment of the final bill to the tune of Rs. 40 lakhs.
3. The case of the Petitioner is that the final bill has been held up and no payment has been made by the Respondents.



4. *Per Contra*, the case of the Respondent is that there have been some defects, which the Petitioner was asked to rectify. The most recent communication from the Respondent was in the form of a letter dated 18th October, 2023, which reads as under:

“CA NO, CEWAC/SUR/61/2011-12: PROVN OF WORK SERVICES FOR INFRASTRUCTURE FOR MLH AT AF STATION SURATGARH: M/S MAGO CONSTRUCTION CO

1. Ref DO No 3 (P) issued vide letter No 8354/61/122/E8 dated 21 Jan 2012 for adding back provisional quantities and Amt of Sch 'A' Part VI site clearance and addn of New items.

2 Also ref your letter No MCPL/493/21 dated 14 Dec 2022.

3. Since Chief Engineer (AF) Palam has resolved the above DO amicably, Now the DO of surface excavation, where excavation over areas to be carried out remain signed under protest which delays the finalization of final bill. Hence you are requested to submit your no claim on the above DO for early clearance of final bill.

4. This is for information and early action.”

5. After perusing the above communication, it appeared to the Court that there was a possibility of resolution of the dispute between the parties in respect of the final bill. Accordingly, the Petitioner’s representative was directed to visit to Garrison Engineer (AF), Military Engineer Services, Suratgarh - 335804 on 1st February, 2024 and 2nd February, 2024 to attempt amicable resolution of the disputes between the parties and clearing of the bill.



6. Vide order dated 16th January, 2024, this Court had directed that since the final bill had been submitted, an attempt could be made to resolve the same failing which the sole arbitrator would be appointed in terms of the Arbitration Clause contained in clause 70 of the GCC. The said arbitration clause of the GCC has been extracted as under:

“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 an Serving Officer having degree in Engineering or equivalent or having passed final/direct final Examination of sub-Division II of Institution of Surveyor (India) recognised by the Govt. of India to be appointed by the authority mentioned in the tender documents

Unless both parties agree in writing such reference shall not take place until after the completion or alleged completion of the Work or termination or determination of the Contract under Condition Nos. 55, 56 and 57 hereof.

Provided that in the event of abandonment of the Works or cancellation of the Contract under Condition Nos. 52, 53 or 54 hereof, such reference shall not take place until alternative arrangements have been finalised by the Government to get the Works completed by or through any other Contractor or Contractors or Agency or Agencies.

Provided always that commencement or continuance of any arbitration proceeding hereunder or otherwise shall not in any manner militate against the Government's right of recovery from the contractor as provided in Condition 67 hereof.



If the Arbitrator so appointed resigns his appointment or vacates his office or is unable or unwilling to act due to any reason whatsoever, the authority appointing him may appoint a new Arbitrator to act in his place.

The Arbitrator shall be deemed to have entered on the reference on the date he issues notice to both the parties, asking them to submit to him their statement of the case and pleadings in defence.

The Arbitrator may proceed with the arbitration, exparte, if either party, inspite of a notice from the Arbitrator fails to take part in the proceedings. The Arbitrator may, from time to time with the consent of the parties, enlarge, the time for making and publishing the award.

The Arbitrator shall give his award within a period of six months from the date of his entering on the reference or within the extended time as the case may be on al/ matters referred to him and shall indicate his findings, along with sums awarded, separately on each individual item of dispute.

The Arbitrator shall give reason for the award in each and every case irrespective of the value of claims or counter claims.

The venue of Arbitration shall be such place or places as may be fixed by the Arbitrator in his sole discretion.

The award of the Arbitrator shall be final and binding on both parties to the Contract.”

7. Mr. Shukla, Id. Counsel for the Respondents has reverted today and submits that the final bill is under audit check, in terms of the communication received by him from the Department on 7th May, 2024. He submits that the final bill will be processed in the usual course in



coordination with the Petitioner. However, if an Arbitrator is to be appointed, the same may be chosen from the panel of arbitrators maintained by the Ministry of Defence. The Petitioner is willing for appointment of an arbitrator from the panel of the MoD.

8. A copy of the said panel of the Ministry of Defence, Government of India, has been handed across to the Court. After perusing the same, with consent of parties, **Mr. Satish Chander, ADG MES** is appointed as the Sole Arbitrator to adjudicate the disputes between the parties. The schedule of fee shall be as per the attachment to the said communication dated 7th February, 2022.

9. However, before the Arbitrator enters reference, let the Respondents take a decision on the final bill and make the payment which as per them would be liable to be paid. For the said purpose, the audit check and the final bill finalizing shall be completed by 31st July, 2024. If any dispute remains, the Arbitrator shall enter reference on 12th August, 2024.

10. The Petitioner shall coordinate with the Respondent in the finalization of the final bill. The short affidavit by the Respondents has been taken on record.

11. If the Arbitrator appointed above is unable to enter reference, parties may mutually agree on any other name mentioned in the panel as per the list of the Ministry of Defence.

12. The petition is disposed of. All pending applications are disposed of.

PRATHIBA M. SINGH
JUDGE

MAY 9, 2024/dj/am