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IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of Decision:- 12.10.2023

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ARB.P. 668/2023

M/S SVK INFRASTRUCTURES (FORMALLY KNOWN AS M/S
SATYA NARAIN) Petitioner

Through: Mr.Avinash Kr. Trivedi, Ms. Ritika
Trivedi, Mr.Anurag Kaushik, Mr. Rhythem
Nagpal and Mr. Jatin Arora, Advs.

versus

DELHI TOURISM AND TRANSPORTATION DEVELOPMENT
CORPORATION LTD. Respondent

Through: Ms.Shobhana Takiar, Adv.

CORAM:

HON'BLE MS. JUSTICE REKHA PALLI

REKHA PALLI, J(ORAL)

1. This is a petition under Section 11 of the Arbitration and Conciliation Act, 1996 (the Act) seeking appointment of an arbitrator for adjudication of disputes which have arisen between the parties in relation to Work Order dated 15.02.2016.
2. Besides urging that the petitioner had already received full and final payment, Ms Takiar learned counsel for the respondent has sought to oppose the petition on three grounds. The first being that there is no valid arbitration agreement with the petitioner. The second ground being that the petitioner has approached this Court without approaching the Dispute Resolution Committee in terms of Clause 25 of the General Conditions of Contract (GCC) and the final plea being



that the agreement being unstamped, cannot be relied upon without the same being impounded in accordance with law.

3. As far as the first ground is concerned, learned counsel for the petitioner submits that the petitioner is a partnership firm which has taken over the assets and liabilities of M/s Satya Narain, a sole proprietorship firm in whose favour the work order had been issued. Moreover, the sole proprietor of M/s Satya Narain is a partner in the petitioner firm and therefore, contends that the petitioner having stepped into the shoes of M/s Satya Narain, it cannot be said that the petitioner is not entitled to invoke arbitration in terms of the work order issued by the respondent. Furthermore, the respondent has already acknowledged the petitioner as the successor of M/s Satya Narain for which purpose he draws my attention to the respondent's communication dated 30.05.2022 addressed to the petitioner.
4. Having considered the submissions of learned counsel for the parties and perused the record, I find absolutely no merit in the respondent's plea that the petitioner, not being a signatory to the work order, could not have invoked arbitration. Once, it is an admitted position that the petitioner partnership firm has stepped into the shoes of M/s Satya Narain, a necessary corollary thereof would be that the petitioner would be entitled to exercise all the rights as were available to M/s Satya Narain, the sole proprietorship firm, especially when the sole proprietor of M/s Satya Narain himself is a partner in the petitioner firm. The petitioner is therefore justified in urging that it was entitled to invoke arbitration in terms of the arbitration clause contained in the GCC.



5. Ms. Takiar has then urged that the petition is premature as the petitioner has approached this Court without first approaching the Disputes Resolution Committee (DRC) in terms of Clause 25 of the GCC. This plea is also equally meritless. A bare perusal of the petitioner's letter dated 06.06.2022 shows that the petitioner had made a specific request to the Chief Engineer of the respondent to refer the disputes between them to the DRC, which was admittedly not done. In these circumstances, when despite a specific request made by the petitioner, the respondent did not take any action to refer the disputes to DRC, the petitioner could not be expected to wait endlessly. The respondent having failed to refer the disputes to the DRC, is now estopped from raising a plea that the petition is premature.
6. Now coming to the respondent's last plea that the work order being unstamped, no reliance could be placed on the arbitration clause contained therein. For this purpose, Ms Takiar relied on the decision of the Apex Court in *M/s. N.N. Global Mercantile Private Limited. vs. Indo Unique Flame Ltd. & Ors., 2023 SCC OnLine SC 495*. She submits that as per Clause 5(c) of Schedule IA of the Indian Stamp Act as applicable to Delhi, any agreement executed in Delhi for which no specific provision has been made in the schedule, is required to be stamped with Rs.50/- and therefore a stamp duty of Rs 50/- needed to be affixed on the work order. In the present case, the work order being unstamped cannot be relied upon to invoke arbitration.
7. In response to this plea, learned counsel for the petitioner has, by placing reliance on proviso (1) to Section 3 of the Indian Stamp Act, urged that no stamp duty was payable on the work order as it would



fall within the term ‘agreement’ executed by the Government, as provided in the proviso (1) to Section 3 of the Indian Stamp Act. He, therefore, contends that since the Act exempts such a work order from being stamped, the decision in *M/s. N.N. Global Mercantile Private Limited (supra)* would not be applicable to the facts of the present case.

8. In order to appreciate the rival submissions of the parties on this aspect, it would be apposite to note proviso (1) to Section 3 of the Indian Stamp Act, on which reliance has been placed by the learned counsel for the petitioner. The same reads as under:

“3. Instruments chargeable with duty.—Subject to the provisions of this Act and the exemptions contained in Schedule I, the following instruments shall be chargeable with duty of the amount indicated in that Schedule as the proper duty therefore, respectively, that is to say—

- (a) xxx*
- (b) xxx*
- (c) xxx*

Provided that no duty shall be chargeable in respect of—

*(1) any instrument executed **by, or on behalf of, or in favour of, the Government** in cases where, but for this exemption, the Government would be liable to pay the duty chargeable in respect of such instrument;”*

(emphasis supplied)

9. I may now note Clause 5(c) of Schedule IA of the Indian Stamp Act, as applicable to Delhi, which has been relied upon by the learned counsel for the respondent. The same reads as under:



“5. *Agreement or Memorandum of an Agreement -*

<i>Description of Instrument</i>	<i>Proper Stamp-duty</i>
<i>(c) if not otherwise provided for:</i>	<i>Fifty rupees.”</i>

10. What emerges from a perusal of Clause 5(c) of Schedule IA is that in Delhi, a stamp duty of Rs.50/- is required to be affixed on every such agreement or memorandum of agreement for which no specific provision has been made therein. This provision, however, has to be read in conjunction with Section 3 of the Indian Stamp Act, which is the charging section and prescribes the instruments which would be chargeable with stamp duty. From a careful reading of proviso (1) of Section 3 of the Act, it becomes evident that no stamp duty would be chargeable *inter alia* on an instrument which has been executed by or on behalf of the Government. In the present case, the respondent has not denied that the work order dated 15.02.2016 has been executed on behalf of the Government. In these circumstances, I am of the considered view that the petitioner has correctly urged that no stamp duty was payable on this work order.

11. In the light of the aforesaid, the work order in question cannot be said to be insufficiently stamped. The decision in *M/s. N.N. Global Mercantile Private Limited (supra)* is thus inapplicable to the facts of the present case.

12. I therefore find no merit in any of the grounds raised by the respondent. The petition is, therefore, entitled to succeed and is accordingly allowed by appointing, with the consent of the parties, Mr. Justice S.P. Garg, a former Judge of this Court, (Mobile No.



9910384627) as the sole arbitrator for adjudication of disputes which have arisen between the parties in relation to work order dated 15.02.2016.

13.The arbitration proceedings will be conducted under the aegis of the DIAC and, therefore, the fees of the learned Arbitrator will be governed by the rules of the DIAC. Before entering upon reference, the learned Arbitrator will comply with Section 12 of the Act.

14.Needless to state, since this Court has not expressed any opinion on the merits of the rival claims of the parties, it will be open for them to raise claims/counter-claims before the learned arbitrator which will be dealt with as per law. It is made clear that it will therefore be open for the respondent to raise a plea before the learned Arbitrator that the petitioner has already received full and final payment in respect of his claims, which plea shall also be considered as per law.

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

(REKHA PALLI)
JUDGE

OCTOBER 12, 2023
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