

(2022) 05 DEL CK 0281

In the Delhi High Court

Case No : Original Miscellaneous Petition (I)(Comm.) No. 313 Of 2019

Om Prakash Kasat

APPELLANT

Vs

Delhi Development Authority & Anr

RESPONDENT

Date of Decision : 26-05-2022

Acts Referred:

Arbitration And Conciliation Act, 1996 — Section 9
Commercial Courts, Commercial Division And Commercial Appellate Division Of High Courts Act, 2015 — Section 2(1)(c)

Citation : (2022) 05 DEL CK 0281

Hon'ble Judges : Neena Bansal Krishna, J

Bench : Single Bench

Advocate : Pooja Devi, Bharat Bhushan Bhatai, Kanika Singh, Shailendra Slaria

Final Decision : Dismissed

Judgement

Neena Bansal Krishna, J

1. A commercial arbitration petition under Section 9 of the Arbitration & Conciliation Act, 1996 read with section 2(1) (C) of the Commercial Courts, Commercial Division and Commercial Appellate Division of the High Courts Act, 2015 has been filed on behalf of the petitioner.

2. It is stated that the petitioner is an "A" Class Government contractor and was granted tender for construction of Community Hall HAF Pocket, Phase-2, Sector-13 Dwarka. The estimated cost of the project was Rs.6,51,10,646/- and earnest money of Rs.13,02,213/- was part of the contract. The period of completion was twelve months. The Tender was accepted by the petitioner with modified letter for a sum of Rs.4,64,01,993/- and the Agreement was duly executed. Pursuant thereto FDR for Rs.23,201,00/- till the validity period of one year three months drawn on Allahabad Bank, was furnished.

3. The petitioner vide letter dated 12th June, 2018 informed the respondents about the completion of the entire work on 24th April, 2018 and made a request

for release of Performance Guarantee deposited at the time of award of Tender and also to issue extension of time proforma. The petitioner re-submitted his claims in regard to the payment of GST on the contract amount as awarded before 1st July, 2017 but executed after 1st July, 2017 in accordance with the Circular issued by CPWD. The original books and measurement books, cement register and other hindrance register are all in the custody of the respondent.

4. The petitioner has raised claims against the respondent and requested for release of the same including the security deposit along with interest. The respondent despite repeated requests has failed to make the final payment even after a period of six months.

5. Clause 25 of the Agreement, the dispute settlement mechanism has been provided as Arbitration. The petitioner issued letter on 10th July, 2019 to the respondent invoking Arbitration clause with a request to nominate a sole arbitrator on the requisite proforma of the respondent, but no action has been initiated.

6. It is claimed that the respondent has committed breach of the Agreement dated 22nd March, 2016 and has failed to release Rs. 79,03,0367/- which is the agreed and settled payment vide final bill dated 07th March, 2019 despite the completion of the project by the petitioner. It is, therefore, submitted that an ex-parte ad-interim injunction be given directing the respondent to release the payment of the Final bill.

7. The respondent DDA in its reply has taken a preliminary objection that by way of the present petition, the petitioner is seeking an award of final claim which is beyond the scope of Section 9 of the Arbitration & Conciliation Act. In fact, no arbitrable dispute has arisen between the parties. Had he rightly invoked Clause 25 and written to Executive Engineer In-charge of work, he would have been informed that the Final Bill is being processed and is likely to be released within a month. Likewise, dispute qua security deposit has also not arisen in terms of Clause 17 of the Agreement. Moreover, the Agreement was only between the petitioner and Delhi Development Authority and the respondent No.2 Executive Engineer, has no role to play in its individual capacity and is a stranger to arbitration Agreement.

8. On merits, it has been explained that Rs.11,60,050/- out of the security deposit being 90% has already been paid to the petitioner on 17th July, 2019 and the remaining amount shall be released as per Clause 17 of the Agreement, for which the stage has not yet arrived. In regard to final bill in the sum of Rs.79,03,0367/- it is asserted that the time for making payment is six months and not three months as claimed by the petitioner. Moreover, the bill submitted was not complete as it was not accompanied with the measurements or analysis of rates of extra items. The petitioner has to send the measurements to the respondent online for acceptance and the final bill is under processing after approval of EIS/SIS/DIS and the bill is likely to be released within a month and a

half. In fact, part payment of nearly Rs.25 lakhs is being released for which analysis and approvals have been processed. Similarly other amounts which are found in order, shall also be released shortly upon completion of process of analysis and approvals. Rs.34,77,436.00 which is the bill of 10CA and 10C has already been paid along with the running bills and final adjustment shall be made during finalization of final bill. Bill of Rs.52,22,027.00 towards GST under Clause 38 has yet not been submitted by the Agency for reimbursement. Interest claim in the sum of Rs.13,28,226.00 and litigation expenses in the sum of Rs.1000000.00 are not payable as no default in payment has been made by the respondent. It is thus, submitted that the petition is without merit and is liable to be dismissed.

9. A short affidavit dated 22nd January, 2020 has been filed on behalf of respondent No.2, wherein it is submitted that the respondent has already made payment of the final bill along with the part payment of 10C on 18th January, 2020. The final bill payment was partly released on 30th October, 2019 and the final payment has also been released on 18th January, 2020. It is submitted that the present petition has become infructuous.

10. Submissions heard.

11. Section 9 of the Arbitration & Conciliation Act provides for interim measures. It provides that a party may before or during the arbitration proceedings may apply to the court for an interim measure for securing the amount in dispute in the arbitration.

12. In the present case, the petitioner had merely sought payment of final bills which, according to the respondent, have already been made. Though, the petitioner had claimed that he had given a Notice for invocation of the arbitration on 10th July, 2019, but during the course of the arguments learned counsel for the petitioner submitted that the Arbitration proceedings have not been initiated till now. The payments have already been made to the petitioner. In case he is still aggrieved by the amounts that have been paid to him, he is at liberty to initiate arbitration. Nothing further survives in the present petition, which is hereby dismissed.