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

+ ARB.P. 729/2022 & I.A. 9597/2022

M/S K.B.G. ENGINEERS

..... Petitioner

Through: Mr. Avinash K. Trivedi, Advocate
with Mr. Anurag Kaushik, Advocate.

versus

DELHI TOURISM AND TRANSPORTATION DEVELOPMENT
CORPORATION LTD.

..... Respondent

Through: Mr. Abhimanyu Garg, Advocate.

+ ARB.P. 730/2022 & I.A. 9598/2022

M/S K.B.G. ENGINEERS

..... Petitioner

Through: Mr. Avinash K. Trivedi, Advocate
with Mr. Anurag Kaushik, Advocate.

versus

DELHI TOURISM AND TRANSPORTATION DEVELOPMENT
CORPORATION LTD.

..... Respondent

Through: Mr. Abhimanyu Garg, Advocate.

+ ARB.P. 731/2022 & I.A. 9599/2022

M/S K.B.G. ENGINEERS

..... Petitioner

Through: Mr. Avinash K. Trivedi, Advocate
with Mr. Anurag Kaushik, Advocate.

versus

DELHI TOURISM AND TRANSPORTATION DEVELOPMENT
CORPORATION LTD.

..... Respondent

Through: Mr. Abhimanyu Garg, Advocate.

+ ARB.P. 732/2022 & I.A. 9600/2022
M/S K.B.G. ENGINEERS Petitioner
Through: Mr. Avinash K. Trivedi, Advocate
with Mr. Anurag Kaushik, Advocate.

versus

DELHI TOURISM AND TRANSPORTATION DEVELOPMENT
CORPORATION LTD. Respondent
Through: Mr. Abhimanyu Garg, Advocate.

+ ARB.P. 733/2022 & I.A. 9601/2022
M/S K.B.G. ENGINEERS Petitioner
Through: Mr. Avinash K. Trivedi, Advocate
with Mr. Anurag Kaushik, Advocate.

versus

DELHI TOURISM AND TRANSPORTATION DEVELOPMENT
CORPORATION LTD. Respondent
Through: Mr. Abhimanyu Garg, Advocate.

CORAM:
HON'BLE MR. JUSTICE ANUP JAIRAM BHAMBHANI

ORDER
03.06.2022

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By way of these five petitions under section 11(6) of the Arbitration & Conciliation Act 1996 ('A&C Act') the petitioner M/s K.B.G. Engineers (a partnership firm) seeks appointment of a sole arbitrator to adjudicate the disputes that are stated to have arisen with

the respondent/Delhi Tourism and Transportation Development Corporation Ltd ('DTDC') from five different tenders, all for construction and renovation works in relation to various projects, in which the respondent corporation provides project management consultancy services. Since the parties in the present matters are the same, as are the prayers made, these matters are being considered and decided by way of this common order.

2. Mr. Avinash K. Trivedi, learned counsel for the petitioner draws attention to clause 25 of the General Conditions of Contract dated 23.05.2011 ('GCCs') which govern the terms of the tender and comprises the arbitration agreement between the parties. It is submitted that though the dispute resolution clause does not specify any particular territorial jurisdiction as regards arbitration or even for the contract otherwise, both the petitioner and the respondent are based in Delhi; the tender was awarded in Delhi; and even the work under the tender was performed in Delhi. Accordingly, it is submitted, that this court has territorial jurisdiction to entertain and decide the present petitions.
3. It is submitted that the disputes essentially relate to non-payment of arrears claimed by the petitioner for the work performed for the respondent. In this behalf various demands were raised and the arbitral mechanism was invoked *inter-alia* *vidé* invocation notices dated 01.01.2020, 16.09.2019, 20.05.2020, 29.01.2022 issued by the petitioner to the respondent.
4. Issue notice on the petitions.

5. Mr. Abhimanyu Garg, learned counsel appears on behalf of the respondent on advance copy; accepts notice; and submits that he has instructions to appear in the matter. Let *vakalatnama* on behalf of the respondent be filed within 03 days.
6. Counsel for the respondent seeks time to file a reply. However, as detailed hereinafter, on being queried as to what objection the respondent may have to the appointment of an arbitrator, this court is of the view that no purpose will be served by seeking a formal written reply from the respondent.
7. Counsel for the respondent submits that he has instructions from Mr. Pawan Kumar, Chief Project Manager of the respondent corporation, to say that the principal objection they have in the present matter is that the petitioner has not invoked the dispute resolution mechanism agreed to between the parties, as comprised in clause 25 of the GCCs. On this count, the objection is that under the dispute resolution mechanism the petitioner was required to first approach the Superintending Engineer (or, as now submitted, the Chief Engineer or Managing Director); whereafter, if the petitioner was dissatisfied with the decision of the said officer, to appeal the decision before the Disputes Redressal Committee ('DRC') to be constituted by the respondent; and only if the petitioner was dissatisfied with the decision of the DRC, could the arbitral mechanism have been invoked.
8. Counsel for the petitioner however points out, that as a matter of fact, the petitioner has gone through the various steps of the dispute redressal mechanism, as would be seen from letter dated 18.12.2020

addressed by the petitioner to the Chief Engineer; and thereafter letter dated 20.10.2021 whereby the respondent was requested to constitute a DRC for taking forward the dispute resolution steps. It is submitted however, that the petitioner received no constructive response at any of these stages; and the DRC never came to be constituted.

9. Be that as it may, as things stand now, counsel for the respondent states that he has instructions from the aforesaid officer to say that, without prejudice to the respondent's rights and contentions and leaving open all issues on merits, the respondent has no objection if the disputes between the parties arising from these contracts are referred to the arbitration of a sole arbitrator to be appointed by the court.
10. Upon a conspectus of the foregoing, and upon a perusal of the documents on record; and based on the submissions made by counsel appearing for the parties, this court is satisfied that there is a valid and subsisting arbitration agreement between the parties; that this court has territorial jurisdiction to entertain and decide the present petitions; and that none of the disputes sought to be raised by the petitioner appear *ex-facie* to be non-arbitrable.
11. Accordingly, the present petitions are disposed of appointing Hon'ble Mr. Justice Madan B. Lokur (former Judge of the Supreme Court of India) (Cellphone No.: 98-682-19007) as the learned Sole Arbitrator to adjudicate upon all disputes that are stated to have arisen between the parties from the tenders/contracts that are subject matter of these petitions.

12. The parties are directed to approach the learned Sole Arbitrator and to obtain requisite disclosures under section 12 of the A&C Act; and if there is any impediment to the appointment of the learned Sole Arbitrator on that count, to file the requisite application before this court. The learned Sole Arbitrator shall be entitled to fee in accordance with Fourth Schedule to the A&C Act; or as may otherwise be agreed to by the parties with the learned Sole Arbitrator.
13. All rights and contentions of both parties are left open, to be considered and decided by the learned Sole Arbitrator.
14. Let the parties approach the learned Sole Arbitrator within 01 week for initiation of arbitral proceedings.
15. Petitions stand disposed of in the above terms.
16. Other pending applications, if any, also stand disposed of.

ANUP JAIRAM BHAMBHANI, J.

JUNE 3, 2022

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