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

*Date of decision: 18<sup>th</sup> January, 2023*

+ **ARB.P. 782/2022**

**M/S CHABBRAS ASSOCIATES**

..... Petitioner

Through: Mr.Vishesh Issar, Ms.Krishna  
Parkhani, Advs.

versus

**M/S HSCC INDIA LIMITED & ANR.** ..... Respondents

Through: Mr.Saurabh Mishra, Ms.Aashnaa  
Bhatia, Mr.Nikhil Sharma, Advs.

**CORAM:**

**HON'BLE MR. JUSTICE NAVIN CHAWLA**

**NAVIN CHAWLA, J. (ORAL)**

1. This petition has been filed under Section 11 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as the 'Act') seeking appointment of an Arbitrator for adjudicating the disputes that have arisen between the parties with respect to the Contract dated 18.09.2018 for Construction of Phase-II works comprising Director's Residence, Type II, III, IV and V Residential quarters for National Institute of Animal Biotechnology (NIAB) at Hyderabad.

2. The learned counsel for the respondents submits that the present petition is premature as the petitioner has not followed the procedure prescribed for appointment of an Arbitrator. Drawing reference to Clause 25 of the General Conditions of Contract (in short, the 'GCC'), he submits that prior to invoking arbitration, the petitioner has to raise its disputes with the Reviewing Authority, and if it is dissatisfied with its

decision, approach the Appealing Authority. If the petitioner still is dissatisfied with the decision of Appealing Authority, the petitioner has to raise its dispute with the Dispute Redressal Committee (in short, the ‘DRC’). It is only where the petitioner or the respondent is dissatisfied with the decision of the DRC, that arbitration can be invoked.

3. On the other hand, the learned counsel for the petitioner submits that the above procedure cannot be considered as a pre-condition for invocation of the Arbitration Agreement between the parties, inasmuch as the Reviewing Authority, the Appealing Authority, and even the DRC are constituted by the officers of the respondents. He submits that these Authorities, therefore, cannot fairly adjudicate the disputes between the parties. He submits that as the respondents terminated the Agreement and invoked the Bank Guarantee submitted by the petitioner, therefore, the petitioner cannot expect any relief from the respondents.

4. In my opinion, the submissions of the learned counsel for the petitioner cannot be accepted.

5. The Clause 25 of the GCC, so far as is relevant to the present petition, is reproduced herein below:

***“SETTLEMENT OF DISPUTES & ARBITRATION***

*Except where otherwise provided in the contract, all questions and disputes relating to the meaning of the specifications, design, drawings and instructions here-in 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:*

*(i) If the contractor considers any work demanded of him to be outside the requirements of the contract, or disputes any drawings, record or decision given in writing by the Engineer-in-Charge 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 authority indicating in schedule 'F' (Reviewing Authority) in writing for written instruction or decision. Thereupon, the Reviewing Authority shall give his written instructions or decision within a period of one month from the receipt of the contractor's letter.*

*If the Reviewing Authority 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 Reviewing Authority, the contractor may, within 15 days of the receipt of the Reviewing Authority's decision, appeal to the authority as indicated in schedule 'F' (Appealing Authority) 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 Appealing Authority shall give his decision within 30 days of receipt of contractor's appeal*

*If the contractor is dissatisfied with the decision of the Appealing Authority, the contractor may within 30 days from the receipt of the Appealing Authority's decision, appeal before the Dispute Redressal Committee (DRC) 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 Appealing Authority. 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 Client 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.*

*(ii) Except where the decision has become final, binding and conclusive in terms of Sub Para (i) above, disputes or difference shall be referred for adjudication through arbitration by a sole arbitrator appointed by the Client.....*

*It is a term of this contract that the party invoking arbitration shall give a list of disputes with amounts claimed in respect of each such dispute along with the notice for appointment of arbitrator and giving reference to the rejection of the Appealing Authority of the appeal.*

*xxxxxx”*

6. A reading of the above Clause clearly shows that before invoking the arbitration, the parties have agreed to the dispute resolution mechanism, where the dispute is first referred to the Reviewing Authority, thereafter to the Appealing Authority and finally to the DRC. It is only where either of the parties is dissatisfied with the decision of the DRC that such party can invoke arbitration. Even the notice invoking arbitration has to give a reference to the decision of the Appealing Authority.

7. In *Sushil Kumar Bhardwaj v. Union of India*, 2009 SCC OnLine Del 4355, this Court has held that the procedure prescribed in the Agreement before invocation of the Arbitration Agreement necessarily needs to be followed, as Section 11 of the Act can be invoked only where the parties have failed to act under the prescribed procedure. The

petitioner itself having failed to act in accordance with the prescribed procedure, cannot invoke the remedy of Section 11 of the Act.

8. In view of the above, the present petition is dismissed as being premature. It is clarified that this Court has not expressed any opinion on the merits of the claim of the petitioner as raised in the present petition. The petitioner shall always have the liberty to file a fresh petition under Section 11 of the Act, if so required, after following the procedure prescribed in the Agreement.

9. The petition is disposed of in the above terms.

**JANUARY 18, 2023/Arya**

**NAVIN CHAWLA, J**

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