

IN THE HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR

Arb P 24/2023

M/S ABDUL SALAM MIR CONSTRUCTION ...Petitioner(s)/appellant(s)
COMPANY PVT LTD

Through: Mr. Showkat Ali Khan, Advocate

Vs.

CHIEF ENGINEER (Nz.V) CPWD AND ORS ...Respondent(s)

Through: Ms. Rehana Qayoom, Assisting Counsel vice
Mr. T. M. Shamsi, Dy. SGI

CORAM:

HON'BLE THE CHIEF JUSTICE

ORDER

24.11.2023

01. Heard learned counsel for the petitioner and learned counsel for the respondents. Though Ms. Rehana Qayoom, Assisting Counsel appearing vice Mr. T. M. Shamsi, learned Dy. SGI for the respondents has prayed for granting more time to file affidavit, however, considering the nature of the case and other pleadings, I am of the view that it will only delay the matter for appointment of Arbitrator, as the respondents had been granted time earlier for filing objections.

02. It is the case of the petitioner that the petitioner had entered into an agreement for construction of works which agreement contains an Arbitration Clause No. 25 which provides for settlement of disputes by way of first referring the dispute to the Dispute Redressal Committee (DRC) and only upon failure of the DRC to give its decision, the matter would be referred to Arbitration.

03. In this regard, learned counsel for the petitioner has drawn attention of this Court to the reference made to the Dispute Redressal Committee by the parties on 22.09.2022, a copy of which has been annexed as Annexure IX to this application and by this letter the dispute was referred to the DRC duly constituted for the said purpose in terms of the aforesaid clause. It may be mentioned that the reference to DRC was made after an application was filed by the petitioner before Principal District Judge, Srinagar in CNR No.

JKSG028028652019 which was disposed of by learned District Judge on 25.07.2019 directing the respondents to constitute the Dispute Redressal Committee. Accordingly, the said Dispute Redressal Committee was constituted by the authorities on 02.05.2022, a copy of which is annexed as Annexure VI to the application. The DRC examined the matter and gave its finding vide decision dated 22.09.2022, a copy of which is annexed as Annexure IX to the application in which the DRC held that efforts were made by the DRC to resolve the dispute but could not be resolved as both the parties were sticking to their stands.

04. Under the circumstances, since the attempt to resolve the dispute through the mechanism of Dispute Redressal Committee as provided in the aforesaid Clause 25 of the Agreement did not fructify, the matter will be required to be referred to the Arbitration. However, in spite of the notice served by the petitioner to the respondents to appoint an arbitrator, no arbitrator was appointed.

05. Under the circumstances and having gone through the pleadings, this Court is of the view that the petitioner has been able to make out the case for appointment of Arbitrator for settling the dispute and, accordingly, this Court proceeds to appoint Justice Mohammad Yaqoob Mir (Retired Chief Justice) as sole Arbitrator who as the sole Arbitrator shall proceed in the matter to decide the dispute between the parties and make the award in accordance with law, after charging the prescribed fee along with incidental expenses to be shared by the parties. The Ld. Arbitrator shall be duly informed of his appointment.

06. The respondents shall be entitled to raise all preliminary objections before the learned Arbitrator.

07. With the above observations and direction, the petition is disposed of.

(N. KOTISWAR SINGH)
CHIEF JUSTICE

SRINAGAR
24.11.2023
Aamir