

H.P. Gupta Vs. Delhi Development Authority and anr.

H.P. Gupta Vs. Delhi Development Authority and anr.

SooperKanoon Citation : sooperkanoon.com/680715

Court : Delhi

Decided On : Jan-09-2002

Reported in : 2002IIAD(Delhi)893; 2002(1)ARBLR542(Delhi); 96(2002)DLT339; 2002(62)DRJ133

Judge : J.D. Kapoor, J.

Acts : [Arbitration and Conciliation Act, 1996](#) - Sections 11(6); Arbitration Act - Sections 16

Appeal No. : IA No. 10142/2000 and AA No. 239/2000

Appellant : H.P. Gupta

Respondent : Delhi Development Authority and anr.

Advocate for Def. : Lalit Gupta, Adv.

Advocate for Pet/Ap. : Nem

Disposition : Application allowed

Judgement :

J.D. Kapoor, J.

1. This is an application under Section 11(6) of the [Arbitration and Conciliation Act, 1996](#) for appointment of the Arbitrator for adjudicating the disputes and differences

referred in the petition. Respondents have failed to appoint the Arbitrator in spite of request of the petitioner. There is a delay of 9 days in filing the instant application. The petitioner has sought condensation of delay by moving the application under section 5 of the Limitation Act bearing IA.No.10142/2000. When the petitioner contacted their senior counsel in August, 2000, they were informed that he had gone abroad and would be returning in 3rd week of August. Thereafter, the attorney of the petitioners fell ill and was confined to bed rest for a period of two weeks. The moment the attorney resumed duties the instant petition was filed.

2. In view of the aforesaid Explanation, the application is allowed.

3. is stands disposed of.

4. The petitioner was awarded the work of construction of 330 LIG Incremental Houses including internal water supply, sanitary installations and internal development work in Section B-4, Pocket-6, Group-II at Narela by respondent No. 2 vide agreement dated 27th September, 1990.

5. Clause 25 of the agreement provided for resolution of disputes and differences between the parties by way of arbitration. The work was completed to the entire satisfaction of the respondents on 6th July, 1993 but subsequently disputes and differences arose between the parties when the petitioner sent a list of his claims vide letter No. 156 dated 18th November, 1997 to the respondent No. 2 for payment thereof. The final bill for the work was released in favor of the petitioner on 9th September, 1997.

6. The failure of the respondents to file the reply to the application in spite of large number of opportunities shows that there is no dispute as to the invocation of the arbitration clauses by the petitioner after receipt of the final bill on 9th September, 1997.

7. It is settled law that once a party is conferred with the power to appoint the arbitrator failed to respond to the request of the aggrieved party to appoint the arbitrator it ceases to have an authority to appoint the arbitrator after the aggrieved party approaches the court for appointment of the arbitrator.

8. The indifferent and cavalier approach of the respondent to the instant proceedings not only supports the averments of the petitioner with regard to the invocation of the arbitration clause but also justifies the appointment of an independent arbitrator by the court.

9. Section 16 of the Arbitration Act confers vast jurisdiction upon the arbitral tribunal. The arbitral tribunal has been empowered to rule on its own jurisdiction, including ruling on any objections with respect to the existence or validity of the arbitration agreement. It has also powers to adjudicate upon the plea that it is exceeding the scope of its authority.

10. The aforesaid facts persuade me to allow the application.

11. Mr. S.B. Lall, a retired Chief Engineer (Arbitration) of Government of India, Department of Telecommunication (Tel. 6899291) R/o C-5/21, Ground Floor, Vasant Kunj is appointed as an Arbitrator. Fee of the Arbitrator shall be fixed as per norms of Indian Council of Arbitration and Conciliation. Parties shall appear before the Arbitrator on 18th February, 2002.