

Court No. - 46

Case :- ARBITRATION AND CONCILI. APPL.U/S11(4) No. - 89 of 2023

Applicant :- M/S Swastik Infrastructure

Opposite Party :- Union Of India And Another

Counsel for Applicant :- Ram Awtar

Counsel for Opposite Party :- A.S.G.I.,Piyush Tripathi

Hon'ble Ashwani Kumar Mishra,J.

This petition has been filed under Section 11 of the Arbitration and Conciliation Act, 1996 for appointment of Arbitrator.

As per the applicant, there exists an arbitration clause between the parties, which has been invoked but the parties have not been able to arrive at an agreement for appointment of arbitrator in terms of Section 11(2) of the Arbitration and Conciliation Act, 1996. Submission is that essential conditions required for invoking jurisdiction of this Court under Section 11(6) clearly exists, and therefore the petition be allowed.

Learned counsel for the opposite party does not dispute the existence of arbitration clause or the accrual of dispute between the parties. What is, however, submitted is that Clause 36.2 puts a ceiling of 20% of the contract value as being the total permissible claim to be raised by way of arbitration. As per the respondents the 20% amount claimed would work out to Rs. 3.26 crores approximately, whereas the maximum claim permissible in terms of Clause 36.2 would only be of Rs.3.04 crores.

Learned counsel for the applicant, in reply, submits that the quantum of amount, which may be found payable to the applicant, can be determined by the arbitrator upon adjudication of various factual aspects, and would not require any observation from this Court while referring the dispute to arbitrator.

This Court finds substance in the contention advanced on behalf of applicant. What exactly would be the claim admissible to the applicant would be an issue to be examined by the arbitrator and not by this Court, while deciding the petition filed under Section 11 of the Arbitration and Conciliation Act. It is undisputed between the parties that there exists an arbitrator clause and such arbitration clause has been invoked but the

parties have failed to arrive at an agreement with regard to appointment of arbitrator. Necessary ingredients to invoke jurisdiction of this Court under Section 11 of the Arbitration and Conciliation Act is shown to arise in the facts of the present case.

In view of the above, this petition for appointment of Arbitrator succeeds and is allowed.

Accordingly, Mr. Justice Allah Raham (Former Judge), R/o Sector- Gamma-1, A-20, Greater Noida, Gautam Budh Nagar (U.P.), Mobile No. 9999011520 & 8601837678, is appointed as an Arbitrator to enter upon the reference and adjudicate the dispute in accordance with provisions of Arbitration and Conciliation Act, 1996, subject to his consent in terms of section 11(8) of the Arbitration and Conciliation Act.

The Arbitrator shall be entitled to fees, in accordance with the provisions of fourth schedule inserted by Act No.3 of 2016. The expenses shall be borne equally by the parties.

Order Date :- 16.11.2023

Anil