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

+ ARB.P. 112/2016

SHARVAN KUMAR PROP. M/S NISHA ELECTRICAL
POWER PROJECT Petitioner

Through: Mr Atul Parmar, Advocate.

versus

TRIPLE A ENGINEERING PVT. LTD. THROUGH ITS
DIRECTOR, SH. N.K. RUSTOGI, Respondent
Through: Mr D. K. Rustagi and Ms Medha
Arya, Advocates.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER

% **07.09.2016**

1. The petitioner has filed the present petition under Section 11 of the Arbitration and Conciliation Act, 1996 (hereafter the 'Act'), *inter alia*, seeking appointment of an Arbitrator to adjudicate the disputes that have arisen between the parties in respect of the work order dated 29.09.2014. The work order dated 29.09.2014 is not disputed.

2. Undisputedly, the work order contains an Arbitration Clause which reads as under:-

“8. Arbitration: In the event of any dispute arising regarding any matter efforts shall be made to settle such dispute

amicably. However, if such a settlement cannot be reached, then the matter shall be left to Arbitration. The Manager Director of Triple A Engineering Pvt. Ltd shall be the sole arbitrator and his decision shall be final and binding on both parties. The arbitration procedure shall be as per Indian Arbitration Act 1996 or any statutory modification or re-enactment thereof and the rules made there under, and for the time being in force, shall apply to the arbitration proceedings under this clause.”

3. The only objection that has been advanced by the respondent is that the work order in question was executed with Mr Raj Kumar, proprietor of M/s Nisha Electrical Power Project and there is no agreement with the petitioner (Sharvan Kumar) who claims to be the proprietor of M/s Nisha Electrical Power Project. The aforesaid contention is countered by the petitioner who submits that Mr Sharvan Kumar is and was always the proprietor of M/s Nisha Electrical Power Project. The petitioner has further affirmed that Mr Raj Kumar is an employee of the petitioner. It is not disputed that Mr Raj Kumar has signed the work order as a proprietor but the petitioner submits that at best, he could be considered as an agent of an undisclosed principal and, therefore, the petitioner is entitled to enforce the said contract. He also states that the bills were submitted which were signed by Mr Sharvan Kumar, *albeit* as an authorized signatory.

4. He also referred to the legal notice dated 10.12.2015 whereby the petitioner invoked the Arbitration Agreement. The said notice has also referred to Mr Sharvan Kumar as the Proprietor of M/s Nisha Electrical Power Project and the response to the said letter did not dispute the aforesaid assertion.

5. I have heard the counsel for the parties.

6. There is no dispute that the agreement (work order) for execution of the works was entered into by the respondent with one M/s Nisha Electrical Power Project. It is also not disputed that works under the work order in question were executed. The disputes only relate to the amount payable in respect of the said contract. According to the respondent a sum of ₹5,690.18 remains to be paid, however, the petitioner claims that a sum of ₹11 lakhs is still payable in respect of the said contract.

7. Mr Sharvan Kumar claims to be the proprietor of M/s Nisha Electrical Power Project and he has filed an affidavit to that effect. He has also affirmed that Mr Raj Kumar is his employee. During the course of arguments, the learned counsel also offered to produce Mr. Raj Kumar in court for confirming the above. The petitioner's contention that by virtue of

Section 231 of the Indian Contract Act, 1872, an undisclosed principal would be entitled to sue on a contract entered into by his agent, is also merited.

8. Thus, in my view, the petitioner would be entitled to sue on the said contract. By virtue of sub-section (6A) of Section 11 of the Act, the examination under Section 11 of Act is now confined to examining the existence of an Arbitration Agreement; which in this case, is not disputed.

9. In the circumstances, the petition is allowed. It is directed that an Arbitrator be appointed under the Rules of Delhi International Arbitration Centre (DIAC). The arbitration shall be conducted under the *aegis* of DIAC and in accordance with its Rules. The parties are directed to appear before the coordinator DIAC on 21.09.2016 at 3:30 PM.

10. The petition is disposed of.

VIBHU BAKHRU, J

SEPTEMBER 07, 2016
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