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

+ ARB.P. 258/2016

EXPOTEC INTERNATIONAL LTD. Petitioner

Through Mr.Alok Kr. Agarwal, Adv. with
Mr.Gaurav Tanwar, Adv.

versus

JEEVAN DIESALS & ELECTRICALS LTD. Respondent

Through None.

CORAM:

HON'BLE MR. JUSTICE MANMOHAN SINGH

ORDER

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30.08.2016

Respondent has been served. No one appears on behalf of the respondent when the matter is taken up. Under these circumstances, the respondent is proceeded *ex parte*.

The present petition has been filed by the petitioner under Section 11 of the Arbitration and Conciliation Act, 1996 for appointment of an Arbitrator.

The brief facts of the case are that on 23rd April, 2013 the petitioner issued a Purchase Order bearing No. EIL/GHA/JEEVAN DIESELDGSETS/13-14/02 dated 23.04.2013 at Delhi in favour of the respondent to supply Two Nos. 600KVA Silent Generator Set for an amount of Rs. 67,00,000/- on Ex Works Pondicherry Basis for export to Ghana. As per the terms and conditions, on 6th May, 2013 the respondent issued an Advance Bank Guarantee bearing No. INBG 03813000030 dated 06.05.2013 of DCB Bank, Bangalore in favour of petitioner and the

petitioner paid 20% of the contract as advance payment through RTGS to the respondent on 21st May, 2013.

On 23rd July, 2013, the respondent issued a letter stating difficulty in procuring engines of brand Perkins and hence requested to supply engine of brand Cummins, which are of inferior quality than the engines of brand Perkins. The respondent also requested to amend the Purchase Order which was amended with the price revision for supply at Rs.66,50,000/-. The respondent failed to supply the D.G Sets and requested for some additional time to supply the same. Since the Advance Bank Guarantee dated 6th May, 2013 was nearing its expiry on 30th November, 2013 the petitioner made request for extension of Advance Bank Guarantee, to which the respondent paid no attention. Petitioner received a soft copy of the extension of Bank guarantee valid till 31st December, 2013 with claim validity till 31st May, 2014 only on 3rd January, 2014, though the petitioner never received original copy of the same.

The said Purchase Order dated 23rd April, 2014 executed between petitioner and respondent contains a valid arbitration clause being clause 16 which reads as under:

"All disputes pertaining to the supply of goods against this purchase order are subject to Delhi jurisdiction only. All disputes, differences arising out of or in respect of the transaction would be subject to arbitration as per Arbitration and Conciliation Act, 1996 and or any subsequent amendment thereto the seat of arbitration would be Delhi alone."

In view of non-action the respondent, the petitioner was compelled to cancel the purchase order on 8th May, 2015 and by notice dated 19th November, 2015 issued to the respondent demanded for return of advance

payment and invoked the arbitration clause. The respondent replied to the notice, whereby the respondent agreed to supply the D.G Set, however, at an escalated present price. The respondent also refused to invoke arbitration clause. Hence, the present petition.

In view of the averments made in the petition and documents placed on record, I am inclined to allow the present petition. Accordingly, Ms.Ayushi Kiran, Advocate (Mob.7838824766) is appointed as sole Arbitrator to adjudicate the disputes between the parties as mentioned in the present petition. The parties are also allowed to file their respective claims and counter-claims before the Arbitrator. Parties to appear before the Arbitrator on 6th October, 2016 for directions.

The arbitration proceedings shall take place in the High Court premises itself. The Arbitrator shall ensure the compliance of the provisions of Arbitration and Conciliation (Amendment) Act, 2015 before commencing the arbitration. The fee of the learned Arbitrator is fixed at Rs.60,000/- which shall be shared by both the parties in equal proportions. In case the respondent will not pay the amount, the petitioner will pay the same, subject to final adjustment of award amount.

The petition is accordingly disposed of.

Copy of this order be given *dasti* to the learned counsel for the parties and a copy thereof be delivered to the learned Arbitrator forthwith.

MANMOHAN SINGH, J.

AUGUST 30, 2016/jk