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IN THE HIGH COURT OF DELHI AT NEW DELHI

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ARB.P. 321/2016

S. P. SINGLA CONSTRUCTIONS PVT. LTD. Petitioner
Through: Mr. Rajshekhar Rao and Mr. Sameer
Dawar, Advocates.

versus

DSC LIMITED Respondent
Through: Mr. Ashish Dholakia with Mr. D.
Kishore Kumar and Mr. Gautam Bajaj, Advocates.

CORAM: JUSTICE S. MURALIDHAR

ORDER

01.12.2016

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1. The present petition under Section 11 of the Arbitration and Conciliation Act, 1996 ('Act') seeks reference of the disputes between the Petitioner and the Respondent arising out of a work order dated 7th March 2008 awarded by the Respondent to the Petitioner for the Design and Construction of Grade Separator at NH-1 and Grade Separator at NH-10 on KMP expressway and ancillary works to arbitration.

2. There are two principal objections raised by the Respondent in its reply. The first is that the Respondent's Engineering, Procurement and Construction (EPC) division has been hived off into a separate company, DSC Engineering Private Limited (DSCEPL), in terms of an order passed on 16th December 2011 by this Court in Company Petition No. 464 of 2011.

3. However, it is pointed out by learned counsel for the Petitioner that in terms of Clauses 16.1 to 16.3 of the scheme of arrangement if after the appointed date (i.e. 30th November 2014) if any proceedings are taken against the Respondent DSC Limited then in respect of the matters referred to in Clause 16.2 it could be defended at the cost of the transferee companies i.e. DSCEPL and DSC Hydro Power Limited (DSCHPL). In terms of Clause 16.1 all pending matters relating to the Respondent shall continue be enforced by or against the transferee companies only to the exclusion of the Respondent in the manner and the same extent as would have been continued or enforced by and against the Respondent. Further in terms of Clause 16.3 the substitution of the party has to be done at the instance of the transferee companies.

4. If the date of invocation of arbitration is taken as 6th April 2010, as contended by the Petitioner, then the arbitration would have commenced prior to the appointed date in terms of the above scheme of arrangement. In any event, in the course of the arbitration proceedings if the learned Arbitrator is satisfied that the Respondent requires to be substituted by DSCEPL then appropriate orders can be passed at the instance of such entity.

5. The second objection is regarding limitation. It is pointed out that the letter dated 6th April 2010 does not in fact invoke the arbitration agreement but only proposes to do so. A perusal of the said letter reveals that the Petitioner has stated therein that if it did not receive from the Respondent a satisfactory response and outstanding payments in full, it would "treat it as a

referable dispute to arbitration and the matter would be referred to arbitration." In a subsequent letter dated 23rd October 2013 addressed to the Respondent, the Petitioner stated: "You are aware, that having regard to section 21 of the Arbitration and Conciliation Act, 1996 read with correspondence resting with our letter No.SPS/P-168/46 dated 06.04.2010, the arbitration proceedings are to be regarded as commenced. Even so, we have been endeavoring to settle the matter by agreement in mutual interest to save the cost and time in the process of arbitration."

6. On the basis of the existing pleadings it is not possible for the Court to come to a definite conclusion at this stage that the claims are time-barred. In terms of the law explained by the Supreme Court in *Indian Oil Corporation Ltd. v. SPS Engineering Ltd. (2011) 3 SCC 507* and *Wexford Financial Inc. Panama v. BHEL (2016) 8 SCC 267* the question would require to be examined by the learned Arbitrator after evidence has been led in that regard by the parties.

7. Although the agreement provides for a three Member Arbitral Tribunal, both parties state that they are agreeable to the Court appointing a sole Arbitrator to adjudicate the disputes between the parties.

8. Leaving open the contention of the parties, both on merits as well as on the maintainability of the claims and counter claims, to be decided by the learned Arbitrator in accordance with law, the Court proposes that Mr. Justice Manmohan Sarin, former Chief Justice of the Jammu & Kashmir High Court (Mob.No.9818000210) be appointed as sole Arbitrator to adjudicate the disputes between the parties including their claims and

counter-claims. The arbitration shall take place under the aegis of the Delhi International Arbitration Centre ('DAC'). The fees of the learned Arbitrator will be in terms of the Delhi High Court Arbitration Centre (Arbitrators' Fees) Rules. The learned Arbitrator will enter upon reference after complying with the requirements of the Act as amended with effect from 23rd October 2015.

9. The petition is disposed of in the above terms. A copy of this order be communicated to the learned Arbitrator as well as Additional Coordinator, DAC forthwith.

S. MURALIDHAR, J

DECEMBER 01, 2016

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