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IN THE HIGH COURT OF DELHI AT NEW DELHI

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ARB.P. 463/2016

SERVOTECH ELECTRICALS LTD

..... Petitioner

Through : Mr Sumesh Dhawan & Ms Vatsala
Kak, Advs.

Versus

EXCLUSIVE FIBRES LTD

..... Respondent

Through : Mr Gurdev Sahil, Adv

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER

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27.09.2016

VIBHU BAKHRU, J

1. The petitioner has filed the present petition under Section 11 (5) the Arbitration and Conciliation Act, 1996 (hereafter 'the Act'), *inter alia*, praying that a sole arbitrator be appointed for the adjudication of disputes which have arisen between the parties in relation to the Work Order and Contract Agreement dated 11.12.2014 (hereafter 'the Agreement') executed between the petitioner and the respondent for execution of the Electrical Installation Work of Carpet Manufacturing Plant at Dahej, Gujarat for a total amount of ₹ 34,20,337.95/-.

2. The petitioner claims that several disputes have arisen in relation to the Agreement which are to be resolved through arbitration in terms of Article 14 of the Agreement.

3. The respondent disputes the claims and averment made by the petitioner in petition, but does not dispute the existence of the arbitration

clause between the parties. The learned counsel for the respondent further submits that before referring the matter to arbitration, the parties were obliged to enter into mutual negotiations for amicable resolution of their disputes, which has not been done and therefore, the present petition is premature. The learned counsel for the respondent also handed over a copy of a letter dated 01.06.2016, whereby the petitioner was invited to Dahej for negotiations for an amicable resolution of the disputes.

4. Mr Dhawan, learned counsel for the petitioner drew the attention of this Court to the letter dated 23.05.2016, whereby the respondent was called upon to resolve the disputes in terms of clause 14.1 of the Agreement - that is, resolution through mutual negotiations – failing which to appoint an arbitrator for adjudication of the disputes. He submits that if the respondent was interested in resolution of disputes amicably through negotiations, it would have made efforts for doing so. He submits that the letter dated 01.06.2016 handed over by the learned counsel for the respondent - whereby the respondent had communicated its agreement to the suggestion for an amicable settlement – was never received by the petitioner.

5. He further submits that even if this letter is considered, it indicates that respondent had called upon the petitioner to visit Dahej for amicable resolution of the disputes, which is not convenient to the petitioner. He states that in this view of the matter, in any case, it is apparent that the dispute between the parties cannot be resolved amicably since the respondent is not willing to depute any person for such negotiations in Delhi.

6. The learned counsel for the respondent states that the letter dated 01.06.2016 was sent through courier and the respondent would be willing to produce its receipts.
7. I have heard the learned counsel for parties.
8. It is not in dispute that the Agreement contains the arbitration agreement which reads as under:-

“14.0 Resolution of Disputes and Arbitration

14.1 In the event of any dispute or difference at any time arising between the parties relating to the WORK ORDER/CONTRACT, meaning or effect of any para or any content of the rights and liabilities of the parties or other matters specified therein or with reference to anything arising out of or incidental to the WORK ORDER/ CONTRACT or otherwise in relation to the terms, whether during the continuance of the WORK ORDER/CONTRACT or thereafter, such disputes or differences shall be endeavoured to be solved by mutual negotiations.

14.2 In case any disputes are not settled amicably then all such disputes shall be finally settled by a sole arbitrator appointed by the OWNER, in accordance with the Arbitration and Conciliation Act, 1996 for the time being in force. The award of the sole arbitrator shall be a reasoned award and shall be final and binding on the Partier. The venue of arbitration proceedings shall be New Delhi, India. The arbitration proceedings shall be conducted and the award shall be stated in English language.

14.3 Any reference to arbitration shall not relieve either party from the due performance of its obligations under the WORK ORDER/ CONTRACT. However, if the nature of disputed matter under arbitration so necessitates, either party may suspend further performance till the arbitration award is available. The period of non-performance under these circumstances shall be added to the contracted period of

completion, without payment of compensation for such delay.”

9. It is also not in dispute that by a letter dated 23.05.2016, the petitioner had invoked the dispute resolution mechanism.

10. In terms of clause No.14.1 of the Agreement, the parties had agreed that they would endeavour to resolve their disputes by amicable negotiations, failing which the same shall be referred to a sole arbitrator.

11. The contention that the petition is premature cannot be accepted as it is apparent that the parties have been unable to amicably resolve their disputes. This is so for several reasons. First of all, the letter dated 01.06.2016, which is relied upon by the respondent is disputed by the petitioner. Secondly, even if it is assumed that the said letter was sent, no further steps were taken by the respondent in furtherance thereof. Thirdly, the petitioner is not willing to go Dahej for further negotiations and the respondent is also not willing to depute any person for negotiations in Delhi.

12. In the above circumstances, only the inescapable conclusion that can be drawn is that the endeavour of the parties for an amicable resolution through negotiations was fruitless.

13. In the circumstances, a sole arbitrator is required to be appointed for adjudication of the disputes.

14. Accordingly, it is directed that an Arbitrator be appointed under the Rules of the Delhi International Arbitration Centre (DIAC). The representatives of the parties shall appear before the Co-ordinator, DIAC on 07.10.2016 at 11:00 AM. The arbitration shall be conducted under the aegis

of DIAC and in accordance with its Rules.

15. In view of above, petition is disposed of.

VIBHU BAKHRU, J

SEPTEMBER 27, 2016

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