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IN THE HIGH COURT OF DELHI AT NEW DELHI

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ARB. P. 271/2015

APPOLO CRANES PVT. LTD.

..... Petitioner

Through: Mr. Hari Parkash, Advocate.

versus

KAZSTORY SERVICE INFRASTRUCTURE
INDIA PVT. LTD.

..... Respondent

Through: Mr. K. K. Sharma, Sr. Advocate with
Mr. Ayush Chourasia, Advocate.

CORAM: JUSTICE S.MURALIDHAR

ORDER

28.11.2016

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1. This is a petition under Section 11 of the Arbitration and Conciliation Act, 1996 ('Act') seeking the appointment of an arbitrator to adjudicate the disputes arising between the parties out of a work order dated 7th May, 2013 to arbitration.

2. The facts are that the aforementioned work order placed by the Respondent with the Petitioner contained, *inter-alia*, clause 17 which reads as follows:

“17. Settlements and Disputes.

If disputes of any kind, whatsoever arises in connection with or arising out of this subcontract, the matter in dispute shall be settled amicably through offices of Project Controller / Project Manager of PCEPL, failing which the dispute shall be finally resolved in

accordance with the Arbitration and Conciliation Act, 1996 by sole Arbitrator to be nominated by the Managing Director of PCEPL, Delhi. The Venue shall be Delhi. This contract is governed as per the laws of India and the jurisdiction of only Delhi Courts shall apply.”

3. On 23rd December, 2014 the Petitioner sent a demand notice to the Respondent stating that a bill in the sum of Rs.1,52,96,568/- still remained to be paid by the Respondent. The Petitioner claimed the said amount along with interest @ 24% per annum apart from the cost of the notice.

4. No reply was received to the above letter. A further demand notice dated 28th February, 2015 invoking the arbitration clause was sent by the Petitioner to the Respondent.

5. In response to the notice issued in the present petition, objections were raised by the Respondent that in terms of Clause 17 of the work order, the Petitioner has to first approach the Project Controller or the Project Manager of PCEPL before he invoking the arbitration clause.

6. When asked about the relationship between the Respondent and PCEPL, Mr. K.K Sharma, Senior Counsel appearing for the Respondent states that the Respondent, in fact, has taken over PCEPL. In that event, it should not have been difficult for the Respondent, on receiving demand notices dated 23rd December 2014 and 28th February 2015 to have required the Project Controller or the Project Manager of PCEPL to examine the claim of the Petitioner. Its failure to do so disentitles it from raising the above objection.

7. With the existence of the arbitration clause and its invocation by the Petitioner not in dispute, the Court appoints Mr. Justice S. N. Dhingra, a former Judge of this Court (Mobile No. 9871300027), 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.

8. 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

NOVEMBER 28, 2016

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