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IN THE HIGH COURT OF DELHI AT NEW DELHI

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ARB.P. 336/2015

ZEP INFRATECH LTD.

..... Petitioner

Through: Mr.H.S. Gautam, Advocate.

versus

LANCO SOLAR ENERGY PVT. LTD.

..... Respondent

Through: Ms. Aditi Sharma, Advocate.

CORAM: JUSTICE S.MURALIDHAR

ORDER

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22.11.2016

1. The Petitioner Zep Infratech Ltd., formerly known as M/s Zeppelin Mobile System India Ltd., has filed this petition under Section 11 of the Arbitration and Conciliation Act, 1996 ('Act') seeking reference of the disputes arising out of the certain work orders and purchase orders issued by the Respondent, to arbitration.

2. According to the Petitioner, the Respondent issued the following two work orders which contained an arbitration clause which states that all disputes will be subject to Delhi jurisdiction:

(i) The work order dated 18th November 2011 for supply of material for its pre-engineered buildings as well as installation work and

(ii) The work order dated 16th August 2011 for erection and handing over of prefab structure of control room building

3. The Respondent also issued two purchase orders, both dated 24th

November 2011 which did not contain an arbitration clause but a jurisdiction clause stating that the Courts of Delhi will have exclusive jurisdiction for settlement of disputes.

4. There are two objections raised by the Respondent to the above prayer. One is that the work order dated 16th August 2011 has been issued to Zeppelin Mobile System India Ltd. and not the present Petitioner. The second objection is that the two purchase orders only contain a jurisdiction clause and not an arbitration clause.

5. As far as the first objection is concerned, it is pointed out by the learned counsel for the Petitioner that in the very first instance when a demand notice was issued to the Respondent on 5th September 2014, it was stated at the outset that it was being issued on behalf of the Petitioner and in parentheses it was indicated 'M/s Zeppelin Mobile System India Ltd.' It is rightly pointed out by the learned counsel for the Petitioner that in the reply filed to the present petition there is no averment raising any such objection. There is no means, therefore, to doubt the assertion of the Petitioner made way back in September 2014, that it was formerly known as Zeppelin Mobile System India Ltd. The first objection is accordingly negated.

6. As far as the second objection is concerned, the Respondent is right in pointing out that the two purchase orders referred to hereinabove did not contain any arbitration clause. With the Respondent not agreeing to the reference of the disputes arising therefrom to arbitration, it is not possible for this Court to refer them to arbitration. As far as the said disputes arising from the purchase orders are concerned, it will be open to the Petitioner to

avail other remedies in accordance with law.

7. However with regard to the other two work orders there is a arbitration clause, which has been invoked by the Petitioner by issuing a legal demand notice.

8. The Court, accordingly, appoints Mr. Sanjoy Ghose, Advocate (Mobile No. 9811118889) as the sole Arbitrator to adjudicate the disputes between the parties including their claims and counter-claims. The Arbitrator shall fix his own terms and communicate them to the parties.

9. The parties are directed to appear before the learned Arbitrator on 9th December, 2016 at 4 pm or such changed time and/or date that the Arbitrator finds convenient which will be communicated to the parties at least ten days in advance. The venue for the first hearing will be arranged by the Petitioner and communicated to the learned Arbitrator and the Respondent at least one week prior to the date fixed. The expenses for the hearing shall be equally shared by the parties.

10. The petition is disposed of in the above terms. A certified copy of this order be delivered to Mr. Sanjoy Ghose forthwith.

S.MURALIDHAR, J

NOVEMBER 22, 2016

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