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

+ **ARB.P. 34/2017**

**ELECON ENGINEERING COMPANY
LIMITED**

..... Petitioner

Through: Mr Subash Mishra and Mr Pulkit
Jindal, Advocates.

versus

THE INDURE PVT. LTD

..... Respondent

Through: Ms Priya Pathania, Advocate.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER

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19.04.2017

1. The petitioner has filed the present petition under Section 11 of the Arbitration and Conciliation Act, 1996 (hereafter 'the Act'), *inter alia*, praying that an arbitrator be appointed to adjudicate the disputes that have arisen between the parties in connection with the Purchase Order dated 02.11.2011. The said Purchase Order includes an arbitration clause, which reads as under:-

“20. ARBITRATION

All disputes or differences whatsoever arising between the parties out of or relating to the construction, meaning and operation or effect of this order or the breach thereof shall be settled by arbitration in accordance with the provisions of Indian Arbitration/Reconciliation Act 1996 or any statutory modification thereof for the time being in force and the awards made in pursuance thereof as subsisting shall be binding on the parties.

Except where otherwise provided in the Order, any dispute arising out of or in connection with the order or claim there under and as to the respective rights, obligations and liabilities

of the parties hereto whether during the continuances of this order or thereafter shall be referred to at the written request of either party to the sole arbitration of Sh. N P Gupta. Chairman of The Indure Private Limited; Indure House, Greater Kailash - II, New Delhi shall be the venue of the arbitration unless otherwise agreed to by both M/s Elecon Engineering Co. Ltd., and The Indure Pvt.Ltd.”

2. In view of the disputes that have arisen between the parties, the petitioner invoked the arbitration clause by its letter dated 22.09.2016 and suggested names of three persons, one of whom who could be appointed as the arbitrator. The respondent responded by its letter dated 12.10.2016 whereby it called upon the petitioner to resolve the disputes amicably failing which the same would be referred to the sole arbitrator appointed “*under specific written instructions received from Mr N. P. Gupta*”.

3. The respondent does not dispute the existence of the arbitration clause. The only objection raised by the learned counsel for the respondent is that the power to nominate the arbitrator vests with the respondent and not with the petitioner. It is submitted that in exercise of the said powers the respondent had already proceeded to appoint the arbitrator unilaterally. In support of the said contention, the learned counsel for the respondent has drawn the attention of this Court to clause 47 of the General Terms & Conditions of Contract (GTC) which are enclosed with the respondent’s letter dated 12.10.2016. In terms of the said clause, the sole arbitrator is to be nominated by the Chairman of Desein Private Limited, Desein House, Greater Kailash-II, New Delhi. The learned counsel for the respondent states that Desein Private Limited is a sister concern of the respondent company.

4. The contention advanced on behalf of the respondent that the

respondent is the sole appointing authority is clearly unmerited. First of all, the petitioner disputes the applicability of the GTC to the Purchase Order. Secondly, it is apparent that the arbitration clause as contained in the Purchase Order would supersede the arbitration clause under the GTC.

5. In terms of the arbitration clause contained in the Purchase Order (as quoted above), the disputes were to be referred to the named arbitrator and there was no discretion on either party to refer the disputes to any other person (except, of course, by mutual consent). Plainly, the named arbitrator is ineligible to act as such. In the circumstances, the contention that the respondent could have unilaterally appointed the sole arbitrator in terms of Clause 47 of GTC is not acceptable. Secondly, even in terms of GTC, the power to appoint the sole arbitrator does not vest with the respondent but was specifically given to the Chairman of Desein Private Limited.

6. In view of the above, Justice R.C Jain (Retd.) (Mobile No. 9818000380) is appointed as the sole arbitrator to adjudicate the disputes between the parties. This is subject to the arbitrator making the necessary disclosure under Section 12(1) of the Act and not being ineligible under Section 12(5) of the Act. The arbitrator shall fix his fee in consultation with the learned counsel for the parties.

7. The parties are at liberty to approach the arbitrator for eliciting necessary disclosure and for further proceedings.

8. The petition is disposed of.

VIBHU BAKHRU, J

APRIL 19, 2017/MK