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

+ CS(COMM) 149/2016 and IA 6150/2016 (u/S. 8 of the Arbitration and Conciliation Act, 1996)

BHARAT HEAVY ELECTRICALS LTD Plaintiff

Through: Mr. S. Sharma and Mr. Raghu Chandra,
Advocates

versus

M/S VISA STEEL LIMITED Defendant

Through: Mr. Sameer Bansal and Mr. Vinayak
Mehrotra, Advocates

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

ORDER

% **10.03.2017**

This civil suit seeking a decree for recovery of money in the sum of Rs.3,45,54,577.70 with interest was filed on 05.12.2015 styled as summary suit under Order XXXVII of the Code of Civil Procedure, 1908 (CPC) raising a commercial dispute within the meaning of the Commercial Courts, Commercial Division and Commercial Appellate Division of High Courts Act, 2015.

The suit, however, has been registered as ordinary commercial suit with the consent of the plaintiff as recorded in the proceedings dated 01.06.2016. The defendant, upon being served, has come up with the application (IA 6150/2016) seeking a reference of the dispute which is the subject matter of the suit to arbitration under Section 8 of the Arbitration and Conciliation Act, 1996, referring to an arbitration clause in the contract no.45006016 dated 20.07.2006 to

which the case relates. A copy of the contract has been submitted by both parties. Concededly it contains the following arbitration clause :-

“15.1 Any dispute or difference at any time arising between the parties hereto with regard to construction, interpretation, meaning or effect of the terms of this contract or relating to any clause contained herein or arising out of rights and liabilities of the parties hereto shall in the first place be settled amicably.

15.2 However, in case the dispute or difference cannot be resolved by means of a negotiated settlement, the matter shall be discussed mutually and referred to one arbitrator. In case no agreement on single arbitrator, the issue shall be got resolved through arbitration comprising three arbitrators – one to be appointed by each party, who shall appoint an arbitrator who shall act as the presiding arbitrator. The Arbitral Tribunal shall give a reasoned award, which shall be final and binding on the parties hereto. Each party reserves right to the legal recourse in case the other party does not cooperate in such proceedings.

15.3 The arbitration proceedings shall be governed by the provision of “The Arbitration and Conciliation Act, 1996” or any statutory modification or any re-enactment there to for the time being in force. The venue of arbitration shall be New Delhi. Both parties shall cooperate in smooth conduct of the arbitral proceedings.”

The application is, however, resisted by the plaintiff on the plea that there was no dispute which required such reference to arbitration arguing that the claim is founded on acknowledgment of the liability in which context the plaintiff relies on two communications, they being email dated 13.06.2012 and letter dated 08.12.2012. But, as pointed out by the defendant, the averments in the plaint, particularly those set out in para 21, clearly show that the cause of action claimed in the suit is based not merely on the said communications of 2012 but

also subsequent invoices, both dated 28.02.2014, each concerning the claim on account of foreign exchange and customs duties variation.

In this view, it cannot be said that the documents in question of 2012 vintage would suffice for the court to treat the matter as one where the entire liability was admitted or, to put it simply, there was no “dispute” requiring reference to be made to arbitration.

In above facts and circumstances, the opposition to the request for reference under Section 8 of the Arbitration and Conciliation Act, 1996 is unmerited.

The application is allowed. The parties are referred to arbitration.

The suit is disposed of in above terms.

R.K.GAUBA, J

MARCH 10, 2017

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