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

+ O.M.P. 769/2011

NAGALAND INDUSTRIAL RAW MATERIALS & SUPPLY
CORPORATION LIMITED Petitioner

Through Mr.Gaurav Mahajan & Mr.Lokesh
Chopra, Advocates

versus

UNION OF INDIA AND ANOTHER Respondents

Through Mr.Manish Mohan, CGSC with
Ms.Manisha Saroha & Ms.Shivangi
Sinha, Advocates

CORAM:

HON'BLE MR. JUSTICE JAYANT NATH

ORDER

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12.09.2017

1. The present petition is filed under Section 34 of the Arbitration and Conciliation Act, 1996 (*hereinafter referred to as 'the Act'*) for setting aside the *ex-parte* award dated 24.02.2011 passed by the learned arbitrator.
2. Some of the relevant facts are that the petitioner entered into a Price Agreement with the respondent DGS&D on 13.02.1991 for the supply of 11,240 CUM of Hardwood(Khasipine) timber to Defence Ordinance. The price for supply of materials was crystallized between the parties. The DGS&D has thereafter, placed orders on 01.05.1991 and 10.06.1991 for supply of material.
3. It is the case of the respondents that against the above two supply orders, the petitioner has not supplied the full ordered quantity and also there was rejection of the some of the materials on account of poor quality. It is

also the case of the respondents that the petitioner has claimed an excess payment of Rs.2 crores for which supply has not been received. The respondents hence sought recovery of Rs.1,95,12,105.07/-.

4. The respondents thereafter appointed Sh.B.L.Chaudhary, Additional Legal Advisor, Ministry of Law & Justice, Government of India as a sole arbitrator. The learned arbitrator by the impugned award noted the arguments of the claimant/respondents. It also noted that the petitioner did not appear in the hearings despite notice of hearings. The learned arbitrator noted that as per claim petition, the respondents claimed Rs.1,95,12,105.07/- along with interest @ 18% per annum. It noted the contentions of the respondents about non-supply of full ordered quantity, short supply and rejection of materials on account of poor quality. It also noted that the petitioner has claimed the excess payment to the tune of Rs.2.00 crores. In para 8.5 of the award, the learned arbitrator noted the communications sent by the petitioner on 25.10.2010, 12.11.2010, 09.12.2010 and 10.01.2011 stating that there is no clause in the Agreement between the parties which gives liberty to DGS&D to nominate a sole arbitrator. The learned arbitrator having noted the said objections of the petitioner, however, without giving any reasons on the objections of his jurisdiction passed an award in favour of the respondents for Rs.1,95,12,105.07/- alongwith interest @ 18 per annum.

5. I have heard the learned counsel for the parties.

6. The matter came up for hearing before this court on 02.08.2017. The learned counsel for the petitioner on that date strenuously argued that there is no arbitration agreement between the parties and hence, the entire award passed by the learned arbitrator is erroneous and wrong. He relied upon the

communications sent to the learned arbitrator in this regard whereby the petitioner had objected to the arbitration proceedings being conducted by the learned arbitrator. On the said date, i.e. 02.08.2017, arguments were heard in part. The learned counsel for the respondents was unable to show any arbitration clause in the agreement between the parties. He sought an adjournment to seek instructions as to whether apart from the Price Agreement dated 13.02.1991 any other document/agreement is applicable to the facts of this case, which contains the arbitration clause. The matter was adjourned to 18.08.2017. On that date, i.e. 18.08.2017, further adjournment was sought by the learned counsel for the respondents as he submitted that in the short period it had not been possible for the Government to locate any document which will show existence of the arbitration clause.

7. Today, the learned counsel for the respondents has relied upon a legal opinion received from Ministry of Law, Department of Legal Affairs on 17.03.2010, which noted the dispute exists between the parties and advised that in terms of the Chapter 18 of the DGS&D Manual, the matter be referred for arbitration. He also submits that DGS&D Manual is always part of Agreement and is binding on the other side.

8. Admitted fact is that the Price Agreement between the parties dated 13.02.1991 does not contain any arbitration clause. There is nothing to show that the parties had agreed that DGS&D Manual would apply to the facts of the present case. Despite several adjournments, the respondents have not been able to show the arbitration agreement in any document which is part of the agreement entered into between the parties. DGS&D Manual cannot be applied to the parties in the absence of a specific stipulation in the agreement that it forms part of the agreement between the parties. It is

manifest that there was no arbitration agreement between the parties. In the absence of any arbitration agreement, the learned arbitrator had no authority to start arbitration proceedings and pass an award. The award is also liable to be set aside under Section 34(2)(a) (ii) of the Act.

9. Accordingly, I set aside the impugned award. The petition is accordingly disposed of.

JAYANT NATH, J.

SEPTEMBER 12, 2017/v