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

+ **ARB.P. 220/2017**

EAGLE ENTERPRISES

..... Petitioner

Through: Mr Navin Kumar, Ms Rashmeet
Kaur, Ms Arpana and Ms Akansha
Chauhan, Advocates.

versus

IRCON INTERNATIONAL LIMITED

..... Respondent

Through: Ms Leena Tuteja, Advocate.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER

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17.05.2017

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 relation to an agreement dated 20.03.2012. The said agreement includes a dispute resolution clause, which is set out below:-

“73.0 SETTLEMENT OF DISPUTES

All disputes and differences of any kind whatsoever arising out of or in connection with the contract, whether during the progress of the work or after its completion and whether before or after the determination of the contract, shall be settled as under, provided that matters for which provision has been made in clauses 20.3, 36.5, 40.1, 40.2, 49.7, 50.0, 51.0, 59.0, 61.2 and 72.2 of General Conditions of Contract or in any clause of the

Special Conditions of Contract shall be deemed 'excepted matters' (matters not arbitrable) and decision of Employer thereon, shall be final and binding on the contractor; provided further that 'excepted matters' shall stand specifically excluded from the purview of this clause.

73.1 Mutual Settlement

All such disputes or differences shall in the first place be referred by the Contractor to the Employer in writing for resolving the same through mutual discussions, negotiations, deliberation etc. associating representatives from both the sides and concerted efforts shall be made for reaching amicable settlement of disputes or differences.

73.2 Conciliation/Arbitration

73.2.1 It is a term of this contract that Conciliation/ Arbitration of disputes shall not be commenced unless an attempt has first been made by the parties to settle such disputes, within 120 days of submission of monthly statement of such claim, through mutual settlement.

73.2.2 In the event of failure to resolve any dispute or difference between the parties hereto as to the construction or operation of this contract, or the respective rights and liabilities of the parties on any matter in question, dispute or difference on any account or as to the withholding by the Employer of any certificate to which the contractor may claim to be entitled to, through mutual settlement, the Contractor may refer such matters to the Managing Director in writing within 60 days from the date of failure of amicable settlement of such disputes or differences for settlement through Conciliation.

If the efforts to resolve all or any of the disputes through Conciliation fails, the Contractor may refer to the Managing Director of the Employer for settlement of such disputes or differences through Arbitration. No disputes or differences shall be referred to Arbitration after expiry of 60 days from the date of notification of the failure of Conciliation.

73.2.3 The demand for Conciliation or Arbitration shall specify the matters which are in question, or subject of the disputes or differences as also the amount of claim item wise. Only such dispute(s) or difference(s) in respect of which the demand has been made, together with counter claims or set off, given by the Employer, shall be referred to Conciliation or Arbitration and other matters shall not be included in the reference.”

2. The learned counsel for the respondent does not dispute the existence of the arbitration clause. He however, states that the petition is pre-mature since parties have not yet exhausted the remedy of resolving the disputes by mutual settlement or conciliation. The same is stoutly disputed by the petitioner.

3. It is seen that the petitioner had sent a letter dated 15.04.2016 raising certain disputes and requesting that the disputes be settled by mutual discussion. No response to the said letter was received by the petitioner. It is also stated that the petitioner made several visits to the offices of the respondent. However, those visits were also in vain.

4. Thereafter, on 25.11.2016, the petitioner sent another letter requesting that its claim of `3,42,32,750/- towards unpaid amounts of the final bill and

towards the work already executed in terms of the contract along with interest @ 18% p.a. be resolved by conciliation. This request also went unheeded and no response was received.

5. Finally, on 02.01.2017, the petitioner invoked the arbitration clause and requested that a sole arbitrator be appointed to adjudicate the disputes between the parties in accordance with the provisions of the Act.

6. It is seen that the petitioner had repeatedly invited the respondent for settlement of disputes by mutual settlement/conciliation. Since the same were not responded to, the question of the petitioner once again attempting to resolve the disputes by mutual consent and conciliation as pre-condition for invoking the arbitration did not arise. Those stages of the dispute resolution mechanism stood exhausted.

7. Since the respondent has not appointed the arbitrator as yet, it is necessary that an arbitral tribunal be constituted for adjudicating of the disputes between the parties. At this stage, the learned counsel for the petitioner requests that instead of panel of three Arbitrators as required under the arbitration clause, a sole arbitrator may be appointed to mitigate the costs. The learned counsel for the respondent also concurs with the aforesaid suggestion. Therefore, with the consent of the parties, it is directed that a sole arbitrator be appointed under the Rules of Delhi International Arbitration Centre (DIAC). The parties/representative of the parties are directed to appear before the Co-ordinator, DIAC on 29.05.2017 at 11:00 AM. The arbitration shall be conducted under the aegis of DIAC and in accordance with its Rules.

8. The petition is disposed of.

9. It is needless to mention that all objections of the respondent as to the maintainability and merits of the claims raised by the petitioner are reserved.

VIBHU BAKHRU, J

MAY 17, 2017
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