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IN THE HIGH COURT OF DELHI AT NEW DELHI

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ARB.P. 332/2011

V.K. AGGARWAL & CO.

..... Petitioner

Through: Mr. Anil Seth, Advocate.

versus

BHARTIA ELECTRIC LTD.

..... Respondent

Through: Mr. A.K. Thakur and Mr. R.K. Mishra,
Advocates for Respondent No.1.

CORAM: JUSTICE S. MURALIDHAR

ORDER

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08.02.2017

1. The resistance to the prayer in the present petition under Section 11(6) of the Arbitration and Conciliation Act, 1996 ('Act') is based on the fact that there is a memorandum of understanding ('MoU') entered into between the parties on 24th March, 2011 whereby the disputes under the original Construction Contract dated 3rd September, 2007 and the Earth Filling Contract dated 6th October, 2007 between the same parties were sought to be resolved.

2. The case of the Petitioner is that the said MoU has not been able to be worked out by the parties. The Petitioner states that it has not received any payment from the Respondent under the MoU despite being *bona fide* ready to comply with its obligations thereunder. The case of the Respondent, on the other hand, is that the Petitioner had agreed to complete the pending

work and remove all defects in terms of the MoU within 30 days but deliberately avoided complying with that obligation. It is further submitted by the Respondent that there was a further agreement with a sub-contractor i.e., M/s. Purshottam Shuttering to whom payment was made in terms of the MoU. It is sought to be suggested that if one part of the MoU has been worked out, it is not open to the Petitioner to resile from the other part.

3. The Court is of the view that the present case is not where after receiving payment under a settlement one of the parties, after a substantial length of time, is seeking to resile from such settlement. The question whether the MoU has been attempted *bona fide* to be worked out by the parties appears to itself be in dispute. With the disputes between the parties arising out of the original Construction Contract and Earth Filling Contract still remaining to be resolved, the arbitration clause in those contracts cannot be said to have come to an end as a result of the MoU, which in any event does not appear to have been worked out.

4. Nevertheless, the Court is of the view that the question whether the MoU forecloses any of the claims of the Petitioner can be examined in the arbitration proceedings. The contentions of the parties in relation to the MoU are left open to be urged before the Arbitrator.

5. Both parties agree that notwithstanding the arbitration clause envisaging a three-Member Arbitral Tribunal, this Court can appoint a sole Arbitrator to adjudicate the disputes between the parties.

6. In the circumstances, this Court proposes that Justice Vikramajit Sen

(Mob. Nos.8447333366, 9818000290), a former Judge of the Supreme Court shall be the sole Arbitrator to adjudicate the disputes between the parties, including their claims and counter-claims. The arbitration shall take place under the aegis of the Delhi International Arbitration Centre ('DAC'). The fees of the learned Arbitrator will be in terms of the Delhi High Court Arbitration Centre (Arbitrators' Fees) Rules. In the first instance, the proposed Arbitrator will make a disclosure to the DAC in terms of Section 11 (8) read with Section 12 (1) of the Act and, thereafter, enter upon reference. DAC will provide to the parties copies of the said disclosure. In the event the disclosure is not made within a reasonable time or such disclosure discloses the inability of the proposed Arbitrator to act as such, it will be open to the parties to apply to this Court for directions.

7. The petition is disposed of in the above terms. A copy of this order be communicated to the learned Arbitrator as well as Additional Coordinator, DAC forthwith.

S. MURALIDHAR, J

FEBRUARY 08, 2017

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