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

+ **ARB.P. 318/2017**

METSO INDIA PVT LTD

..... Petitioner

Through: Mr Upamanya Mazarika, Senior
Advocate with Mr Abhishek Kumar,
Mr Nitin Khare and Ms Paul Roy,
Advocates.

versus

MONNET ISPAT & ENERGY LIMITED

..... Respondent

Through: Ms Anne Mathew and Mr Ajit
Shukla, Advocates.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER

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15.05.2017

IA No.5902/2017

1. Allowed, subject to all just exceptions.

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2. 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 in relation to disputes that have arisen between the parties in relation to contracts – five in number – namely, Purchase Order Ref. No.MIEL/HO/PRJ-3/4019/POH10-00096 and WOH10-00017 (in short POH10-00096 and WOH10-00017 dated 10.06.2010; Purchase Order Ref. No.MIEL/HO/PRJ-3/4020/POH10-00104 and WOH10-00018 (in short POH10-000104 and WOH10-00018) dated 14.06.2010;

Contract being No.WOH13-00042 dated 14.06.2013; Purchase Order being Ref. No.PRJ/MIEL/PTH/PO/25/14 dated 01.04.2014 and Purchase Order being Ref. No.PRJ/MIEL/PTH/PO/25(SP)/14 dated 01.04.2014.

3. The learned counsel for the respondent has pointed out that there is no arbitration clause in the two Purchase Orders dated 01.04.2014.

4. Insofar as Purchase Order dated 10.06.2010 and Purchase Order dated 14.06.2010 are concerned, both contracts contain an identically worded arbitration clause, which is set out below:-

“24.0 ARBITRATION

In case of any dispute, the arbitration shall be conducted in accordance with the provisions of the Arbitration and Reconciliation Act, 1996 or any statutory modification thereof. The venue of Arbitration shall be Delhi, India.”

5. Insofar as the contract dated 14.06.2013 is concerned the same also includes an arbitration clause, which is set out below:-

“Article-18 DISPUTE, ARBITRATION AND APPLICABLE LAW

In the event of any difference of opinion or dispute arising between the Parties in connection with the Contract, the Parties shall first discuss mutually in good faith and try to amicably resolve the difference or dispute within thirty (30) Days, failing which either Party shall be entitled to refer the matter to arbitration as per the Arbitration & Conciliation Act, 1996 of India and its provisions.

The seat of arbitration shall be New Delhi/Delhi, India. The arbitration proceedings shall be in English language. The arbitration

award shall be final and binding on the Parties. Each Party shall be responsible for and bear its costs, charges, fees and expenses of the arbitration/Arbitration Council.

In the course of arbitration, the Parties shall continue to perform their respective obligations under the Contract except those obligations which are subject matter of under arbitration or as may be directed by the Arbitrators.

This Contract shall be governed by and construed in accordance with the laws of India without regard to any conflict of law provisions that may be contained therein.”

6. The learned counsel for the respondent does not dispute the existence of the arbitration clauses or the fact that the same had been invoked by the petitioner. Apparently, the parties have been unable to concur on appointment of an arbitrator and, therefore, an arbitrator is required to be appointed to adjudicate the disputes between the parties.

7. With the consent of the parties, Justice R. V. Easwar (Retired) is appointed as the sole arbitrator to adjudicate the disputes that have arisen between the parties in connection with the first three agreements, that is, Purchase Order Ref. No.MIEL/HO/PRJ-3/4019/POH10-00096 and WOH10-00017 (in short POH10-00096 and WOH10-00017 dated 10.06.2010; Purchase Order Ref. No.MIEL/HO/PRJ-3/4020/POH10-00104 and WOH10-00018 (in short POH10-000104 and WOH10-00018) dated 14.06.2010; Contract being No.WOH13-00042 dated 14.06.2013.

8. This is subject to the arbitrator making the necessary disclosure under Section 12 of the Act and not being ineligible under Section 12(5) of the Act. It is clarified that although the arbitrator has been appointed in respect

of all three contracts, they are separate contracts and the three arbitrations would proceed separately; the proceedings will culminate into three separate awards (unless the parties agree otherwise). The manner in which the proceedings will be conducted will be determined by the arbitrator.

9. At the request of the parties, it is further directed that the arbitration shall be conducted under the aegis of Delhi International Arbitration Centre (DIAC) and in accordance with its Rules. The parties are directed to appear before the Co-ordinator, DIAC on 26.05.2017 at 11:00 AM for further proceedings.

10. Insofar as disputes relating to the two Purchase Orders dated 01.04.2014 are concerned, the petitioner is at liberty to take such proceedings as advised but in the absence of an arbitration agreement, an arbitrator cannot be appointed.

11. The petition is disposed of.

VIBHU BAKHRU, J

MAY 15, 2017
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