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

+ **ARB.P. 401/2017**

MOHAN ENERGY CORPORATION PVT. LTD.,..... Petitioner
Through Mr.Manjit Singh, Advocate

versus

CHETAK INTERNATIONAL PVT. LTD Respondent
Through Mr.Ramesh Kumar & Mr.Siddharth
Pandey, Advocates

CORAM:

HON'BLE MR. JUSTICE JAYANT NATH

ORDER

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19.09.2017

1. This petition is filed under Section 11 of the Arbitration and Conciliation Act, 1996 (*hereinafter referred to as 'the Act'*) seeking appointment of an independent arbitrator to be appointed by this court.
2. It is the case of the petitioner that on 15.05.2013 after mutual consultation, the parties entered into an agreement to provide door to door logistics services for transportation and delivery of cargo to Mali.
3. Dispute having arisen between the parties, the petitioner invoked the arbitration clause on 14.03.2017 and sought the consent of the respondent to appoint an arbitrator in the invocation letter. The respondent on 17.04.2017 declined to give consent for appointment of the arbitrator namely Sh.S.M.Chopra, ADJ(Retd.) as suggested by the petitioner and sought to appoint their nominee, namely Sh.K.S. Gupta as co-arbitrator. It was stated that the two arbitrators could nominate the third arbitrator. Hence the respondent pleads that instead of letting the two nominated arbitrators select the third arbitrator the petitioner has prematurely approached this court.

4. I have heard the learned counsel for the parties.
5. The learned counsel for the respondent submits that though the arbitration clause between the parties is silent about the composition of the arbitral tribunal, including the fact as to whether the arbitration is to be held by a sole arbitrator or by a three member arbitral tribunal, the petitioner have appointed Sh.S.M.Chopra, ADJ(Retd.) as their arbitrator and have hence modified the terms of the arbitration agreement by their conduct. Hence it is urged that implicit in their conduct was that the matter be heard by a three member tribunal. In response to the said act of the petitioner, the respondent has also nominated their arbitrator. Hence, he submits that these two arbitrators nominated by the respective parties could nominate the third arbitrator. He also submits that the present petition is premature. He further reiterates that instead of giving a proposal in their letter of invocation the petitioner has chosen to appoint an arbitrator.
6. The agreement between the parties contains an arbitration clause, which reads as follows:

“18. ARBITRATION:

In the unlikely event of a dispute arising between CIPL and MECPL during the execution of the contract.

1. Both parties through heads of the organization shall make every effort to resolve the dispute by mutual consultation.
2. If the dispute remains unresolved after 30 days of its commencement, it may be referred for arbitration.
3. Arbitration shall be in India and the disputes shall be settled as per the provisions of Indian Arbitration and conciliation Act 1996 as amended from time to time and Hague Visby, France Multi Modal Transportation/Maritime law as amended from time to time. However, during arbitration proceedings, contract shall remain operative.
4. Place of Arbitration shall be New Delhi. Exclusively.”

Hence, the clauses only state that if the dispute remains unresolved

after 30 days of its commencement, it may be referred for arbitration.

7. As the arbitration clause does not stipulate as to whether three arbitrators are to be appointed or a sole arbitrator, it is manifest that under Section 10(2) of the Act, the disputes have to be referred to a Sole Arbitrator. Section 10 of the Act reads as follows:

“10. Number of arbitrators.—

(1) The parties are free to determine the number of arbitrators, provided that such number shall not be an even number.

(2) Failing the determination referred to in sub-section (1), the arbitral tribunal shall consist of a sole arbitrator.”

8. In my opinion, there is no merit in the plea of the respondent that the parties have interpreted the arbitration clause to mean that arbitration has to be conducted by an arbitral tribunal. A perusal of the notice dated 14.03.2017 sent by the petitioner would show that the name of Sh.S.M.Chopra is only proposed subject to consent of the respondent. Relevant portion of the notice clearly states that if the respondent fails to give their consent within 30 days, the petitioner will take steps under the Arbitration and Conciliation Act, 1996 (amended upto date). It was only a notice issued by the petitioner to seek consent of the respondent for the purpose of appointment of a sole arbitrator. There was no intention to appoint an arbitral tribunal comprising three arbitrators. In any case in view of the agreement between the parties and Section 10(2) of the Act, a sole arbitrator has to be appointed.

9. Accordingly, Mr.Sachin Chopra, Advocate (Mobile No.9811502909, 9818097777) is appointed as the sole arbitrator to adjudicate the dispute between the parties. The arbitration shall take place under the aegis of Delhi International Arbitration Centre, New Delhi (*in short 'The DIAC'*). A copy of this order be sent to the DIAC and to the learned arbitrator.

10. The petition stands disposed of as above.

SEPTEMBER 19, 2017/v

JAYANT NATH, J.