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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **ARB.P. 405/2017**
PRADEEP VINOD CONSTRUCTION CO. Petitioner
Through: **Mr.S.W.Haider, Adv.**

versus

UNION OF INDIA Respondent
Through: **Mr.Madhulike Agarwal &**
Mr.J.K.Singh, Advs.

CORAM:
HON'BLE MR. JUSTICE NAVIN CHAWLA

ORDER
% **19.12.2017**

This is a petition under Section 11 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as the 'Act') filed by the petitioner seeking appointment of an Arbitrator for adjudicating the disputes that have arisen between the parties under Acceptance Letter dated 24.06.2013 awarding the work of Construction of Limited height subway in lieu of U/M L.Xing No. C-145 at Km. 170-171/1 & C-147 at Km 170/7-8 on DLI-BTI section under ADEN/JHI by cut and cover method.

It is submitted that the General Conditions of the Contract (GCC) contains an Arbitration Agreement in form of Clause 64(1)(i). The same is reproduced hereinbelow:-

“ 64(1)(i) Demand for Arbitration- In the event of 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 or any account

or as to the withholding by the Railway of any certificate to which the contractor may claim to be entitled to, or if the Railway fails to make a decision within 120 days, then and in any such case, but except in any of the 'excepted matters' referred to in clause-63 of these conditions, the contractor, after 120 days but within 180 days of his presenting his final claim on disputed matters, shall demand in writing that the dispute or difference be referred to arbitration” .

The petitioner had invoked the Arbitration Agreement vide its letter dated 19.04.2017, however, the respondent, vide its letter dated 03.05.2017 called upon the petitioner to first waive the applicability of Section 12(5) of the Arbitration and Conciliation Act, 1996 before the request for appointment of an Arbitrator can be considered. The petitioner filed the present petition in such circumstances.

Upon issuance of notice to the respondent, the respondent has filed its reply. The plea taken by the respondent is that the petitioner had given No Claim Certificate while signing the final bill and therefore, cannot now raise the same as a dispute as the claims stand fully satisfied with the No Claim Certificate.

Whether there was a final settlement or not is a question to be determined by the Arbitrator. In view of Section 11(6A) of the Act, this Court is to confine its examination to the existence of an Arbitration Agreement. The respondent does not deny the existence of an Arbitration Agreement and invocation thereof.

In ***Duro Felguera, S.A. v. Gangavaram Port Limited*** (2017) 9 SCC 729, Supreme Court, while examining the scope of Section 11(6A), has held as under:-

“47. what is the effect of the change introduced by the Arbitration and Conciliation (Amendment) Act, 2015 (hereinafter referred to as “the 2015 Amendment”) with particular reference to Section 11(6) and the newly added Section 11(6-A) of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as “the 1996 Act”) is the crucial question arising for consideration in this case.

48. Section 11(6-A) added by the 2015 Amendment, reads as follows:

11. (6-A) The Supreme Court or, as the case may be, the High Court, while considering any application under sub-section (4) or sub-section (5) or sub-section (6), shall, notwithstanding any judgment, decree or order of any court, confine to the examination of the existence of an arbitration agreement.

(emphasis supplied)

From a reading of Section 11(6-A), the intention of the legislature is crystal clear i.e. the court should and need only look into one aspect-the existence of an arbitration agreement. What are the factors for deciding as to whether there is any arbitration agreement is the next question. The resolution to that is simple-it needs to be seen if the agreement contains a clause which provides for arbitration pertaining to the disputes which have arisen between the parties to the agreement”.

In view of the above, I find no impediment in appointing an Arbitrator for adjudicating the disputes that have arisen between the parties in relation to the above Acceptance Letter.

In view of the above, I appoint Mr.Koka Raghava Rao, Senior Advocate (r/o Flat No.1003, 10th Floor , Tower-12, Supreme Towers Sector-99, Noida (UP), Ph: 9908032323, E.mail:

kokaraghavarao@yahoo.com) as the Sole Arbitrator for adjudicating the disputes that have arisen between the parties. The Arbitrator, before proceeding with the reference, would file his declaration in compliance with Section 12 of the Act. The arbitration would be conducted under the aegis of Delhi International Arbitration Centre (DIAC) and its rules as to procedure and fee.

The petition is allowed in the above terms with no order as to costs.

Dasti.

NAVIN CHAWLA, J

DECEMBER 19, 2017rv