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

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Judgment delivered on: 18.07.2017

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ARB.P. 406/2017

SCORPIO ENGINEERING PRIVATE LIMITED

..... Petitioner

versus

INDIAN POWER CORPORATION (HALDIA) LIMITED
& ANR.

..... Respondents

Advocates who appeared in this case:

For the Petitioner : Mr. Manu Seshadri with Ms. Sahiba Ahluwalia, Mr. Arjun Syal
and Mr. Ishan Bisht, Advocates.

For the Respondent : Mr. Karun Mehta, Advocate for respondent No.1.
Mr. Ravi Kishore with Mr. Alok Kumar Srivastava, Advocates
for respondent No.2.

CORAM:-

HON'BLE MR JUSTICE SANJEEV SACHDEVA

JUDGMENT
18.07.2017

SANJEEV SACHDEVA, J. (ORAL)

1. The petitioner has filed the present petition under Section 11 of the Arbitration & Conciliation Act, 1996(hereinafter referred to as 'the Act').
2. By this petition, the petitioner seeks appointment of an independent sole arbitrator to determine and adjudicate the disputes and claims between the parties.
3. The petitioner Company was called upon by the respondent No.1 company to submit its bid for designing, engineering, manufacturing,

supply, erection, commissioning of coal handling project/system of the 3x150 MW Power Plant in Haldia, Purba-Medinipur, West Bengal.

4. The bid was accepted and, accordingly, an agreement was entered into between the parties. Consequent to the agreement, a purchase order was placed on the petitioner by the respondent No.2 on 20.12.2013.

5. The petitioner along with the respondent Nos.1 and 2 entered into an agreement on 20.12.2013 and also agreed to the General Commercial Terms and Conditions, which, *inter alia*, contain the arbitration agreement.

6. The arbitration agreement as contained in the General Commercial Terms and Conditions reads as under:-

“29.0 *ARBITRATION*

29.1 In the event of any dispute or difference arising out of the execution of the Order/Contract or the respective rights and liabilities of the parties or in relation to interpretation of any provision by the Seller/Contractor in any manner touching upon the Order/Contract, such dispute or difference shall (except as to any matter the decision of which is specifically provided for therein) be referred to the arbitration of the person appointed by the competent authority of the Purchaser.

Subject as aforesaid, the provisions of Arbitration and Conciliation Act, 1996 (India) and statutory modifications or re-enactments thereof and the rules made there under and for the time being in force shall apply to the arbitration proceedings under this clause. The venue of arbitration shall be at NOIDA/New Delhi/Delhi.”

7. Learned counsel appearing for the respondent No.1 submits that though, respondent No.1 had signed the General Commercial Terms and

Conditions, there were no obligations on the respondent No.1 to be performed under the contract and, claims, if any of the petitioner, would be only against the respondent No.2.

8. The issue raised by the respondent No.1 that there are no obligations of the respondent No.1 to be performed qua the petitioner is not an issue that arises for consideration in a petitioner under section 11 of the Act seeking appointment of an Arbitrator. This would be subject matter of the proceedings before the arbitrator. This Court while considering an application under Section 11 of the Act, is not to examine the maintainability of a claim or the defence of the respondents. This court is required to ascertain as to whether there is an arbitration agreement between the parties and as to whether there are disputes.

9. Admittedly, the parties have signed the General Commercial Terms and Conditions, which contain the arbitration clause and admittedly, there are disputes between the parties. The requirements of Section 11 of the Act are, thus, satisfied.

10. The petitioner issued a notice dated 14.04.2017 calling upon the respondents to pay the amount claimed by the petitioner, failing which, it is stated that the disputes would be deemed to have arisen and referred to arbitration in terms of Clause 29 of the General Terms and Conditions.

11. The notice dated 14.04.2017 was received by the respondents on 20.04.2017. This petition has been filed on 06.06.2017 and, admittedly, till date, no arbitrator has been appointed by the respondents.

12. Learned counsel for the respondents submits that, without prejudice

to the defence of the respondents, they have no objection to the appointment of an independent sole arbitrator by this Court to adjudicate the disputes between the parties.

13. Accordingly, Mr. Justice Mukul Mudgal, (Retired) Former Chief Justice of Punjab & Haryana High Court is appointed as the sole Arbitrator to adjudicate the disputes between the parties. This is subject to the Arbitrator making necessary disclosure under Section 12 of the Act of not being ineligible under Section 12(5) of the Act.

14. The Arbitrator shall adjudicate the claims of the petitioner and counter-claims, if any, of the respondent.

15. The Arbitrator shall fix his fee in consultation with learned counsel for the parties.

16. The parties are at liberty to approach the learned Arbitrator for elucidating the necessary disclosures and for further proceedings.

17. The petition is accordingly disposed of.

18. Order *Dasti* under signatures of the Court Master.

SANJEEV SACHDEVA, J

JULY 18, 2017
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