

\$~4

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

% Judgment delivered on: 21.09.2017

+ **ARB.P. 466/2017**

MARSONS ELECTRICAL INDUSTRIES Petitioner

versus

FEDDERS LLOYD CORPORATION LTD Respondent

Advocates who appeared in this case:

For the Petitioner : Mr. A.K. Thakur, Advocate with Mr. R.K. Mishra
and Mr. Rishi Raj, Advocates

For the Respondent : Mr. P.S. Bindra, Advocate with Ms. Rishika and
Ms. Savi Abbot, Advocates

**CORAM:-
HON'BLE MR JUSTICE SANJEEV SACHDEVA**

JUDGMENT

SANJEEV SACHDEVA, J. (ORAL)

1. The petitioner by this petition under Section 11 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as 'the Act') seeks appointment of a Sole Arbitrator to adjudicate the disputes between the parties.

2. As per the petitioner, the respondent approached the petitioner for supply of transformers for the purposes of export.

3. Subsequent to negotiations, Purchase Order dated 15.11.2012

was issued for supply of 4964 number of transformers. The Purchase Order dated 15.11.2012 was later split into 12 (twelve) different Purchase Orders.

4. As per the petitioner, the respondent have, *inter alia*, short paid the sale consideration, not passed on the duty draw back received from the Custom Authorities caused towards repair etc.

5. The petitioner invoked the arbitration clause by notice dated 12.06.2017.

6. The arbitration clause as contained in the original Purchase Order dated 15.11.2012 reads as under:-

“13.0 DISPUTES

13.1 Both the parties will attempt in good faith to resolve by negotiations or mediation, any controversy or claim regarding the rights and obligations under this order or its breach. If they are unable to do so and regardless of the causes of action alleged, the claim will be resolved by arbitration in the territory of Delhi area, before a single Arbitrator who is knowledgeable in area of expertise required in this order and the appointment of the arbitrator shall be on solely discretion of FLCL. The arbitrator's award will be final and binding, and may be entered in any court having jurisdiction thereof. Each party will bear its own attorney's fees and costs related

to the arbitration.”

7. Learned counsel for the respondent submits that the claims of the petitioner are barred by time. However, without prejudice to the said contentions to be raised before the Arbitral Tribunal, he has no objection to an independent Sole Arbitrator being appointed.

8. Accordingly, with the consent of parties Mr. Justice Manmohan Sarin, Former Chief Justice, High Court of Jammu and Kashmir (Mobile No. 98180002210) is appointed as the Sole Arbitrator to adjudicate the disputes between the parties emanating out of Purchase Order dated 15.11.2012 and the consequent 12 (twelve) split purchase orders.

9. This is subject to the Arbitrator making the necessary disclosures under Section 12 of the Act of not being ineligible under Section 12(5) of the Act.

10. The Arbitral Tribunal shall adjudicate the claims of the petitioner and the counter claims, if any, of the respondents.

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

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

13. It is clarified that this Court has neither examined nor commented upon the issue of limitation raised by the learned counsel

for the respondent. The said issue is left open to be considered and decided by the learned Arbitrator, if so raised.

14. Petition is accordingly disposed of.

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

SEPTEMBER 21, 2017/nn **SANJEEV SACHDEVA, J**

