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

+ **ARB.P. 639/2017**

L&T HYDROCARBON ENGINEERING LIMITED.

..... Petitioner

Through : Mr.Dhirendra Negi, Ms. Pragya
Chauhan, Advocates.

versus

NATIONAL FERTILIZERS LIMITED.

..... Respondent

Through : Mr.Deepak Khurana, Mr.Apurv,
Advocate.

CORAM:

HON'BLE MR. JUSTICE YOGESH KHANNA

ORDER

% **29.11.2017**

On the basis of contract/work order dated 10.03.2010 for modernization of ammonia plant of the respondent certain claims were raised by the petitioner for the extra work done and qua the amount wrongly deducted by the respondent. The contract dated 10.03.2010 has an arbitration clause 14.4 which notes :-

“14.4 ARBITRATION

14.4.1 All disputes which cannot be settled by mutual negotiations, the matter shall be referred for arbitration in accordance with the provisions of the Arbitration and conciliation Act, 1996 or any statutory modification or enactment thereof for the time being in force.”

It is submitted by the learned counsel for the petitioner that vide a letter dated 23.01.2017 in reference to clause 14.1 of the contract the petitioner raised three disputes viz. a) the wrong

deduction of ₹11 crores against price reduction clause of the respondent; b) payment due under charge order request; and c) deduction of ₹1.26 crores against replacement of the HT Shift catalyst by NFL. The claim (c) of ₹1.26 crores was settled by the respondent in March 2017. Since other two claims were not settled, the petitioner invoked the arbitration clause by its letter dated 19.08.2017.

The learned counsel for the respondent submit since the contract was discharged by the petitioner, per its letter dated 09.07.2014, hence the arbitration clause ceases to exist. I may refer to contents of such letter dated 09.07.2014:-

“As discussed & advised by NFL, though we feel that the Claims submitted by us are genuine and tenable, we hereby agree to withdraw our extra / additional claims (other than those already settled) for the subject projects.

It is understood & agreed that NFL shall favourably review our case for time extension of the project at NFL Panipat by taking into consideration the various submissions and reverse the decision on penalty of 1% of contract value at the earliest. We look forward to early favourable settlement.”

A bare perusal of the aforesaid letter would reveal it was a conditional offer made subject to favourably reviewing the case of the petitioner for time extension of the project. Admittedly such favour was never granted by the respondent. Moreso, despite the letter dated 09.07.2017 of the petitioner, the respondent yet pursued claim (c) and settled it and hence now it cannot allege the ceasing of

the contract and consequently the arbitration clause.

In the circumstances Ms. Justice Rekha Sharma (retd.) Mobile No. 9871300025 is hereby appointed as an arbitrator to arbitrate the disputes between the parties. Of course, the respondents shall have a liberty to raise its contentions qua limitation and otherwise before the arbitrator. The fee shall be as per the fee schedule given in the Act.

In view of the above the petition stands disposed of.

YOGESH KHANNA, J

NOVEMBER 29, 2017

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