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IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of decision: 14th May, 2018

+ ARB.P. 154/2018

PRAVIN SINGH CHAUHAN Petitioner
Through: Mr.Siddharth Garg, Adv.

versus

DELHI TRANSCO LIMITED Respondent
Through: Ms.Avnish Ahlawat, with Ms.Palak
Rohmetra, Advs. along with Mr.Gaurav Gupta,
Manager (Legal).

CORAM:

HON'BLE MR. JUSTICE NAVIN CHAWLA

NAVIN CHAWLA, J. (Oral)

1. This petition has been filed under Section 11 of the Arbitration and Conciliation Act, 1996 seeking appointment of an Arbitrator for adjudicating the disputes that have arisen between the parties in relation to the Contract Agreement dated 24th September, 2014 in terms of which the respondent has been awarded the work of 'Security and Allied Services in the West Zone of Delhi Transco Limited' on the terms and conditions contained in its LOA/LIO No. L.DTL/204/M(T) SERVICES/2014-15/Oprns. C&MM/82 dated 18th September, 2014.

2. The Agreement between the parties contains an Arbitration

Agreement, which is contained in clause 4.1 of the main Agreement to be read along with clause 12 of the Letter of Acceptance dated 18th September, 2014. The same are reproduced as under:-

4.1 It is specifically agreed between the parties that all the difference or disputes arising out of the agreement or touching the subject matter of the agreement shall be decided by process of settlement and arbitration as specified in the General terms & Conditions of the contract and the provisions of the Indian Arbitration Act, 1996, shall apply and Delhi courts alone shall have exclusive jurisdiction over the same.

Letter of Acceptance

“12. ARBITRATION

In case of any dispute arising out of this agreement then CMD/MD, DTL shall nominate a sole arbitrator to adjudicate upon the issue involved in the dispute and the provisions of the Arbitration and Conciliation Act, 1996 shall be applicable. The arbitrator appointed by the CMD/MD DELHI TRANSCO LIMITED will be final and binding on the parties to the contract and Courts at Delhi/New Delhi only shall have jurisdiction over the same. The venue of the arbitration shall be at New Delhi.”

3. Disputes having arisen between the parties, the petitioner invoked the Arbitration Agreement by its notice dated 21st September, 2017 read with subsequent notice dated 11th November, 2017. In the said notice(s), the petitioner apart from invoking the Arbitration Agreement, also proceeded to nominate an arbitrator and sought consent of the respondent to such appointment.
4. Having received no response to the above notice(s), the petitioner filed the present petition on 9th February, 2018.

5. Counsel for the respondent submits that the notice dated 21st September, 2017 cannot be treated as a notice invoking arbitration. She submits that in terms of the Agreement, the CMD/MD of the respondent was to appoint the Arbitrator. She submits that not only was the notice not addressed to the CMD/MD of the respondent, but also the petitioner had proceeded to appoint an Arbitrator unilaterally. I do not find any merit in the said submission. Notice dated 21st September, 2017 in no ambiguous words invokes the Arbitration Agreement, though in addition, the petitioner proceeded to nominate an Arbitrator. The petitioner sought the consent of the respondent to such nomination. If the respondent had any grievance against the nominated Arbitrator or the procedure followed by the petitioner, the respondent could have replied to such notice stating its grievances or appointed an arbitrator in accordance with the procedure. The respondent, however, chose to maintain complete silence after the receipt of this notice. It is only by a letter dated 20th February, 2018, that is, after the filing of the present petition that the respondent for the first time responded to the above mentioned notice(s).

6. As far as the objection of the respondent that the notice was not addressed to the CMD/MD and, therefore, is not proper invocation of the Arbitration Agreement is considered, I do not find any merit in the same. The Letter of Acceptance was issued by the Manager (T) Services of the respondent. The Agreement between the parties does not give any address or authority to whom the notice has to be served by the petitioner. The receipt of notice dated 21st September, 2017 is not denied by the respondent. It is a matter of internal management of

the respondent. The respondent should have proceeded with expedition on receipt of such notice and forwarded the same to its CMD/MD for appointment of the Arbitrator.

7. Counsel for the respondent further submits that the copy of the petition was served on the respondent only on 22nd February, 2018 and the respondent had appointed an Arbitrator vide its letter dated 27th April, 2018. She further submits that as the invocation was not in terms of the Arbitration Agreement and has been disputed by the respondent vide its letter dated 20th February, 2018, that is before receipt of copy of the petition, the respondent was within its rights to appoint an Arbitrator. I cannot agree with the said submissions. Admittedly, 30 days' period as provided in the Act had expired much before the filing of the petition, which as noted above was filed on 9th February, 2018. Merely because a copy of this petition is received by the respondent only on 22nd February, 2018, the invocation or the filing of the petition by the petitioner cannot be affected. In terms of *Datar Switchgears Ltd. vs. Tata Finance Ltd. & Anr.* (2000) 8 SCC 151, the respondent had forfeited its right to appoint an Arbitrator upon the filing of the present petition.

8. I, therefore, do not find any grounds having been made out for resisting the appointment of an Arbitrator for adjudicating the disputes that have arisen between the parties in relation to the above mentioned Agreement.

9. The parties are accordingly directed to appear before the Delhi International Arbitration Centre (DIAC) on 28th May, 2018 at 2.00 p.m. The DIAC shall appoint an Arbitrator for adjudicating the

disputes that have arisen between the parties. The arbitration and the fee shall be governed by the DIAC Rules.

10. The petition is disposed of with the above directions with no order as to costs.

MAY 14, 2018
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NAVIN CHAWLA, J