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

+ **O.M.P. (COMM) 185/2018**

M/S DSC LIMITED

..... Petitioner

Through Mr Ashish Dholakia, Mr Gautam Bajaj,
Mr Rohan Chawla, Advocates.

versus

UNION OF INDIA

..... Respondent

Through Mr Sanjay Devoam, Advocate.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER

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01.05.2018

IA No. 5804/2018

1. Allowed, subject to all just exceptions.
2. The application is disposed of.

IA No. 5805/2018

3. For the reasons stated in the application, the delay in filing the petition is condoned. The application is disposed of.

O.M.P. (COMM) 185/2018

4. Issue notice. Learned counsel for the respondent accepts notice.
5. The petitioner has filed the present petition under Section 34 of the Arbitration and Conciliation Act, 1996 (hereafter 'the Act') impugning an arbitral award dated 21.12.2017 (hereafter 'the impugned award') rendered by the Arbitral Tribunal constituted by a Sole Arbitrator (hereafter 'the Arbitral Tribunal').

6. Mr Dholakia, learned counsel appearing for the petitioner has restricted the challenge to the extent of claim no.1 which pertains to the petitioner's claim regarding levy of liquidated damages. The aforesaid disputes were referred to the arbitrator by a letter dated 01.03.2012. The contents of the said letter read as under:-

“Whereas M/s DSC Ltd. vide their letter dt. 15.12.2011 have written that certain disputes have arisen between the above noted parties in respect of the above noted work, I, S.A. Khan, Chief Engineer, Flyover Project Zone F-1, PWD, New Delhi by powers conferred on me under clause-25 of the said agreement hereby appoint Sh. K.N. Agarwal, (Retd. DG(W), CPWD)) as sole Arbitrator to decide and make his award regarding the claims/disputes by M/s DSC Ltd., if any, shown in the statement enclosed subject always, however, to their admissibility under clause-25 of the aforesaid agreement. The Arbitrator shall determine the arbitrability of claim No.1 under the provisions of agreement.

The amount of the claims in disputes being above Rs.1,00,000/- the arbitrator shall give reasons for the award.”

7. The Arbitral Tribunal has declined to adjudicate claim no. 1 on the ground that the reference is incomplete. According to the Arbitral Tribunal, the only dispute referred was with regard to the question of arbitrability of claim no. 1. Since, according to the Arbitral Tribunal, the scope of arbitration did not include any further adjudication, the Arbitral Tribunal has declined to consider the said claim.

8. There is much merit in Mr Dholakia's contention that the letter dated 01.03.2012 cannot be read in the manner in which it has been read by the Arbitral Tribunal inasmuch as the claim no. 1, including the question of arbitrability of the said claim, was referred to the Arbitral Tribunal and the

reference was not limited to the question of arbitrability of claim no. 1 alone.

9. In the aforesaid view, the impugned award to the extent it deals with claim no. 1 is set aside. The petitioner would be at liberty to seek reference of its claim no. 1 (relating to the levy of liquidated damages) to arbitration. It is clarified that all rights and contentions of the parties in this regard including whether the said dispute is arbitrable are reserved.

10. The petition is disposed of in the above terms

VIBHU BAKHRU, J

MAY 01, 2018

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