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IN THE HIGH COURT OF DELHI AT NEW DELHI

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ARB.P. 251/2018

Date of Decision: 13.09.2018

CONNECT ARCHITECTURAL PRODUCTS PVT. LTD.

..... Petitioner

Through Mr. Ashish Kumar Singh, Adv.

versus

ERA INFRA ENGINEERING LTD AND ANR

..... Respondent

Through None.

CORAM:

HON'BLE MR. JUSTICE RAJIV SHAKDHER

RAJIV SHAKDHER, J. (ORAL)

1 Notice in this petition was issued on 09.04.2018, which was made returnable on 17.07.2018. Since, there was no appearance on behalf of the respondents, adverse orders were deferred. In the order dated 17.07.2018, it was noticed that respondent No. 1 & 2 are the same entity and that in the memo of parties, they were shown separately only for the reason that the different addresses were given for effecting service on the entity going by the name Era Infra Engineering Ltd. Therefore, hereafter the said entity would be referred to as the respondent. Despite deferring adverse orders in the matter, even today there is no representation on behalf of the respondent.

2 The petitioner seeks appointment of an Arbitrator in the matter in view of disputes having arisen in respect of Work Order No: EPC-Infra -1/HO/W0/10-11/0002/1183/00063.

3 The value of this work order, according to the petitioner, was a sum of Rs.5,79,923/-. The petitioner, upon disputes having arisen, issued a legal notice dated 10.11.2017. Via the said legal notice, the petitioner demanded a sum of Rs.12,69,044/- along with costs.

3.1 The reason that a demand in the sum of Rs.12,69,044/- (Rs.5,79,923/-+ Rs. 5,37,581/-+ Rs. 1,51,540/-) was made as the petitioner had entered in two other work orders qua which separate arbitration petitions have been filed. These arbitration petitions are numbered as: Arb. P. No.275/2018 & Arb. P. No.276/2018. These arbitration petitions are also on my board today and are listed as items No. 3 & 4.

4 It appears that the petitioner had, in fact, filed a civil suit for recovery of the said sum of Rs.12,69,044/-. The said civil suit, apparently, was disposed of in view of the permission sought by the petitioner to withdraw the suit. This aspect of the matter is recorded in the order dated 27.10.2017 passed by the Additional District Judge, Central (Pilot Court).

5 The arbitration agreement obtaining between the parties which, is reflected in Clause 2.6, Annexure 1 of the work order, reads as follows:

“2.6 Arbitration

a) Any disputes arising out of this Contract shall be referred to the sole arbitrator i.e. Managing Director of Era Infra Engineering Ltd. who may further appoint any person not

below the rank of General Manager and there shall be no objection if arbitrator so appointed is an employee of Era Infra Engineering Ltd.

In Case the Arbitrator to whom the matter Is originally referred get transferred or vacates his office or unable to act for any reason as aforesaid at the time of -such transfer, vacation of office or inability to act, Managing Director, EIEL shall appoint another person to act as Sole Arbitrator in accordance with the provisions of Arbitration & Conciliation Act 1996.”

6 A perusal of the arbitration clause would show that the disputes between the parties had to be referred to the sole Arbitrator i.e. the Managing Director of the respondent. The clause further provides that the Managing Director of the respondent has the power to appoint any other person as the Arbitrator, who is not below the rank of a General Manager.

7 Given the provisions of Section 12 of the Arbitration and Conciliation Act, 1996 (in short ‘1996 Act’) read with Schedule VII, the Managing Director of the respondent would be ineligible to act as a sole Arbitrator in the matter. Since, the Managing Director is ineligible to act as a sole Arbitrator, he cannot have the power to appoint another person to act as the Arbitrator.

8 In any case, the respondent has not entered appearance in the Court despite notice.

9 In these circumstances, the prayer made in the petition is allowed.

10 Accordingly, Mr. Arun Kumar Arya, Former Principal Judge, Family Court, Delhi (M: 9910384687) is appointed as the sole Arbitrator. Learned Arbitrator will adjudicate upon the disputes, vis-

a-vis all three work orders i.e. Work Order No: EPC-Infra-1/HO/W0/10-11/0002/1183/00063, Work Order No: EIEL/HO/W0/09-10/0002/1139/00019/216/656 and Work Orders No.EIELIHO/W0/09-10/0002/1131/00031/1/598.

11 The learned Arbitrator will be paid fee as per the provisions of the Schedule V of the 1996 Act.

12 Petition is disposed of in the above terms.

RAJIV SHAKDHER, J

SEPTEMBER 13, 2018

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