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

+ **O.M.P. (T) (COMM.) 23/2018**

FOURTH DIMENSION SOLUTIONS LIMITED Petitioner

Through: Mr Darpan Wadhwa, Sr. Advocate
with Mr Sidhartha Das, Ms Astha
Nigam and Mr Toyesh Tiwari,
Advocates.

versus

RICOH INDIA LIMITED

..... Respondent

Through: Ms Ritu Bhalla and Mr Yajur Mittal,
Advocates.

WITH

+ **O.M.P. (T) (COMM.) 24/2018**

FOURTH DIMENSION SOLUTIONS LIMITED Petitioner

Through: Mr Darpan Wadhwa, Sr. Advocate
with Mr Sidhartha Das, Ms Astha
Nigam and Mr Toyesh Tiwari,
Advocates.

versus

RICOH INDIA LIMITED

..... Respondent

Through: Ms Ritu Bhalla and Mr Yajur Mittal,
Advocates.

WITH

+ **O.M.P. (T) (COMM.) 25/2018**

✓ FOURTH DIMENSION SOLUTIONS LIMITED Petitioner

Through: Mr Darpan Wadhwa, Sr. Advocate
with Mr Sidhartha Das, Ms Astha
Nigam and Mr Toyesh Tiwari,
Advocates.

versus

RICOH INDIA LIMITED

..... Respondent

Through: Ms Ritu Bhalla and Mr Yajur Mittal,
Advocates.

WITH

+ O.M.P. (T) (COMM.) 26/2018

FOURTH DIMENSION SOLUTIONS LIMITED Petitioner

Through: Mr Darpan Wadhwa, Sr. Advocate
with Mr Sidhartha Das, Ms Astha
Nigam and Mr Toyesh Tiwari,
Advocates.

versus

RICOH INDIA LIMITED

..... Respondent

Through: Ms Ritu Bhalla and Mr Yajur Mittal,
Advocates.

AND

+ O.M.P. (T) (COMM.) 27/2018

FOURTH DIMENSION SOLUTIONS LIMITED Petitioner

Through: Mr Darpan Wadhwa, Sr. Advocate
with Mr Sidhartha Das, Ms Astha
Nigam and Mr Toyesh Tiwari,
Advocates.

versus

RICOH INDIA LIMITED

..... Respondent

Through: Ms Ritu Bhalla and Mr Yajur Mittal,
Advocates.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

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ORDER
09.04.2018

IA No.4595/2018 in O.M.P. (T) (COMM.) 23/2018
IA No.4596/2018 in O.M.P. (T) (COMM.) 24/2018
IA No.4597/2018 in O.M.P. (T) (COMM.) 25/2018
IA No.4598/2018 in O.M.P. (T) (COMM.) 26/2018
IA No.4600/2018 in O.M.P. (T) (COMM.) 27/2018

1. Allowed, subject to all just exceptions.

O.M.P. (T) (COMM.) 23/2018
O.M.P. (T) (COMM.) 24/2018
O.M.P. (T) (COMM.) 25/2018
O.M.P. (T) (COMM.) 26/2018
O.M.P. (T) (COMM.) 27/2018

2. The petitioner has filed the present petitions under section 14 of the Arbitration and Conciliation Act, 1996 (hereafter 'the Act'), *inter alia*, praying for substitution of the arbitrators appointed by the respondent. The prayers made in these petitions are identically worded and read as under:-

- "a) Pass an order for appointment of an Arbitrator preferably a retired High Court Judge to act as a sole Arbitrator to adjudicate all the five (5) different disputes in the five (5) different contracts between the Petitioner and the Respondent;
- b) The cost of the petition may be kindly awarded in favour of the Petitioner;"

3. Concededly, the petitioner and the respondent have entered into five different agreements (hereafter 'the Five Agreements') for implementation of five different projects. The four agreements (which are subject matter of the above petitions except O.M.P. (T) (COMM.) 27/2018) have an identically worded arbitration clause that reads as under:-

"15. Governing Laws & Jurisdiction

The formation, validity, interpretation, execution, termination of and settlement of disputes and differences under this Purchase Order and any all claims arising directly or indirectly from the relationship between Ricoh and the Supplier (such dispute, difference or claim hereafter referred to as "Dispute") shall be governed by the laws of India. All disputes shall be first tried to be resolved through good faith discussion. In the event a Dispute is not resolved within 15 (fifteen) days, the such Dispute shall be referred to binding arbitration. Arbitration and Conciliation Act, 1996. The arbitration shall be conducted in English language and the place of arbitration shall be New Delhi."

4. The learned counsel appearing for the parties also point out that in O.M.P. (T) (COMM.) 27/2018, the disputes have arisen in respect of a Service Agreement dated 28.06.2016, which contains an arbitration clause, that reads as under:-

"11.11 Dispute settlement: Any dispute, controversy or claim or difference of any kind whatsoever arising between the FDS and Ricoh, out of or in relation to this agreement or any related agreement or other document or the validity, interpretation, breach or termination thereof ("Dispute"), including claims shall be redressed or settled amicably by both the Parties through discussion. Any dispute that is not thus resolved, including any questions regarding its existence, shall be submitted to binding arbitration under the arbitration provisions of Indian Arbitration and Conciliation Act, 1996 and the rules framed thereunder and to be conducted by sole Arbitrator appointed mutually amongst the parties. Venue of Arbitration shall be New Delhi. The language of Arbitration will be English. The Court of New Delhi shall have jurisdiction with respect to Arbitration or any other dispute."

5. In view of the disputes that have arisen between the parties, the

petitioner sent letters dated 11.09.2017 (five-in-number) seeking resolution of the said disputes. Thereafter, the petitioner sent a notice dated 02.02.2018 invoking the arbitration clause in each of the Five Agreements. The petitioner also proposed the name of an arbitrator to be appointed. The allegations made in the said notice were disputed by the respondent by a letter dated 03.03.2018. The respondent also disputed that in terms of the arbitration clause, an arbitrator could be suggested by the petitioner.

6. The respondent has, thereafter, proceeded to appoint arbitrators in respect of each of the Five Agreements. The grievance of the petitioner is that the appointment of five different arbitrators – one in respect of each of the Five Agreements – would not be cost effective and would also delay the proceedings.

7. Mr Wadhwa, learned Senior Counsel for the petitioner had also contended that there was an implied agreement between the parties that a Sole Arbitrator would be appointed to adjudicate the disputes in respect of all the Five Agreements, as they were entered into pursuant to a master agreement dated 03.02.2015 (hereafter 'the Master Agreement').

8. Before proceeding further, it would be relevant to refer to Section 14 of the Act, which reads as under:-

"14. Failure or impossibility to act.— (1) The mandate of an arbitrator shall terminate and he shall be substituted by another arbitrator, if—

(a) he becomes de jure or de facto unable to perform his functions or for other reasons fails to act without undue delay; and

(b) he withdraws from his office or the parties agree to the termination of his mandate.

(2) If a controversy remains concerning any of the grounds referred to in clause (a) of sub-section (1), a party may, unless otherwise agreed by the parties, apply to the Court to decide on the termination of the mandate.

(3) If, under this section or sub-section (3) of section 13, an arbitrator withdraws from his office or a party agrees to the termination of the mandate of an arbitrator, it shall not imply acceptance of the validity of any ground referred to in this section or sub-section (3) of section 12."

9. It is apparent from the plain reading of Section 14(1) that the question of terminating the mandate of an arbitrator would arise only if (i) the arbitrator becomes *de jure* or *de facto* unable to perform his functions; or (ii) he fails to act without undue delay; or (iii) that he withdraws from his office; or (iv) the parties agree to the termination of his mandate. In the present case, there is no dispute that the arbitrators are not *de facto* unable to perform their functions. Further, none of the arbitrators have withdrawn from the office nor have the parties have agreed to termination of their mandate.

10. Mr Wadhwa, the learned Senior Counsel appearing for the petitioner seeks to place the case of the petitioner (although not so articulated in the petitions) on the ground that the Arbitrators are *de jure* unable to perform the functions. He submits that this is so as there is an implied agreement that only one single arbitrator would be appointed to adjudicate the disputes arising out of all the five Agreements. According to Mr Wadhwa, this implied agreement can be discerned from the fact that the parties had

entered into the Master Agreement and the arbitration clauses in the Five Agreements in question are identically worded.

11. The aforesaid contention is wholly bereft of any merit. A plain reading of the notices issued by the petitioner, as well as the Five Agreements, clearly indicates that there are five different contracts for five different projects. This is also the express averment by the petitioner in each of the present petitions. Paragraph 4 of each of the present petitions, which is identically worded, reads as under:-

“4. The Petitioner and the Respondent executed Five (5) different contracts for implementation of five (5) different projects. Each of the Five (5) different contracts has identical Arbitration Clause.”

12. The contention that all the Five Agreements have identically worded arbitration clause is also incorrect. In the Service Agreement dated 28.06.2016, which is the subject Agreement under O.M.P. (T) (COMM.) , 27/2018, the arbitration clause is worded differently. The learned counsel appearing for the respondent has also pointed out that the notices dated 11.09.2017 issued by the petitioner also sought invoking the dispute resolution mechanism under Clause 11.11 of the said Service Agreement.

13. A perusal of the petition also indicates that contentions advanced by Mr Wadhwa are not supported by the pleadings; there is no averment to the effect that there is any implied agreement between the parties for referring the disputes relating to all the five Agreements to a single arbitrator. The only relevant averment made in the petition is that the petitioner believed that a single arbitrator would be appointed to adjudicate the disputes arising

from all the Five Agreements.

12. In view of the above, the present petitions are unmerited and, accordingly, dismissed.



VIBHU BAKHRU, J

APRIL 09, 2018/MK