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

+ **ARB.P. 378/2018**

EMCO LTD

..... Petitioner

Through Ms Poonam Verma, Ms Abiha Zaidi,
Advocates.

versus

DELHI TRANSCO LTD & ANR.

..... Respondents

Through Mr Avnish Ahlawat, Standing counsel
with Ms Ralak Rohnbtra, Advocate with Mr S.K.
Garg, Manager (T) DTL and Mr Gaurav Gupta
Manager (L), DTL.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER

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22.05.2018

IA No. 7143/2018

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

ARB.P. 378/2018

3. The petitioner has filed the present petition under Section 11 of the Arbitration and Conciliation Act, 1996 (hereafter 'the Act'), inter alia, praying that an arbitrator be appointed to adjudicate the disputes that have arisen in relation to the two purchase orders being Purchase Order no. L.DTL/204/M(T)SP.II/2004/1/3210/Oprns.Store dated 07.01.2005, for supply of two (02) nos. 100 MVA 220/66-33/11 kV Power Transformers and associated works including erection, testing and commissioning of the power transformers and Purchase Order bearing no.

L.DTL/204/M(T)SP.II/2004/1/3182/Oprns.Store dated 21.12.2004 for supply of four (04) nos. 100 MVA 220/66-33/11 kV Power Transformers and associated works including erection, testing and commissioning of the power transformers.

4. The Purchase Order dated 21.12.2004 contains an arbitration clause which reads as under:-

“ARBITRATION: If any dispute, question or controversy, the settlement of which is not herein specifically provided for shall at time arise between the Department, and the supplier/contractor relating to this order/contract or any clause or thing contained on the construction there of any, matter connected with this contract/order, or portion of the same or the rights/duties or liabilities of other party, then and in every such case, the matter in dispute shall be referred at the arbitration to CMD or his nominee and the decision of the CMD or his nominee shall be final and binding on both the parties.

The provision of the Indian Arbitration Act 1940 as amended from time to time shall apply to such arbitration proceeding. Arbitration proceeding shall be held at Delhi and only Delhi Courts will have jurisdiction in the matter. It will not be open to the contractor/supplier to object to the appointment of CMD of the Department or his nominee as arbitrator on the ground that the same is an officer of the Department and/or has dealt with the matter in question the course of his duties or has expressed his views on all/or any matter in dispute Services under this contract/order shall notwithstanding the existence of any such disputes question controversy continue during the arbitration proceedings and no payment due or payable by the Department to the contractor or vice versa shall be withheld on account of such proceedings unless such payments are the direct subject of such arbitration proceedings.”

5. It is not disputed that the aforementioned clause stands incorporated by reference in the Purchase Order dated 07.01.2005. There is also no dispute that the petitioner has invoked the arbitration clause. Ms Ahlawat, the learned counsel appearing for the respondent further states that the CMD has also issued instructions for appointment of an arbitrator, however, an arbitrator has not been appointed. She further states that the respondent also has counter claims in relation to the above mentioned purchase orders.

6. Since there is no dispute as to the existence of the arbitration agreement and that the same had been duly invoked, the arbitrator is required to be appointed.

7. With the consent of the parties, it is directed that a sole arbitrator be appointed by the Delhi International Arbitration Centre (DIAC) for adjudication of all disputes relating to the Purchase Orders that fall within the scope of the arbitration clause as set out above. The arbitration shall be conducted under the aegis of DIAC and in accordance with its Rules. The parties are directed to appear before the Co-ordinator, DIAC on 31.05.2018 at 11:00 AM for further proceedings.

8. It is clarified that all rights and contentions of the parties are reserved.

9. The petition is disposed of in the above terms.

10. Order *dasti*.

VIBHU BAKHRU, J

MAY 22, 2018

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