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

+ ARB.P. 656/2018

MELCO INDIA PVT. LTD. Petitioner
Through Mr.Varun Pathak, Adv.

versus

ANEJA CONSTRUCTIONS (I) LIMITED Respondent
Through Mr.S.K. Jain, Ms.Stuti Jain and
Mr.Akshey Jain, Adv.

CORAM:

HON'BLE MR. JUSTICE NAVIN CHAWLA

ORDER

% **25.10.2018**

1. This petition under Section 11 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as the 'Act') has been filed by the petitioner seeking appointment of an Arbitrator for adjudicating the disputes that have arisen between the parties in relation to the Work Order dated 31.05.2016 placed by the petitioner on the respondent for the Balance Civil Construction and Architectural Work for Ash Handling System at 3 x 660 MW Stage-I Unit # 1,2 and 3 NTPC Barh, Patna, Bihar. The said order contains an Arbitration Agreement between the parties in form of Clause 44 thereof, which is reproduced hereinbelow:

“44.(i) All disputes and differences arising out of or in connection with or touching upon this agreement/work order shall in the first instance be settled amicably by negotiation between the authorized representatives of both the parties failing which such dispute of difference shall be resolved through Arbitration before a sole Arbitrator who is appointed and agreeable to both parties.

(ii) The Arbitration proceedings shall be conducted in accordance with the Arbitration Conciliation Act, 1966 and/or statutory modifications thereof. The Arbitration shall be final and binding on the parties. The venue of Arbitration proceedings shall be at New Delhi. The language of the proceedings shall be in English.”

2. The disputes having arisen between the parties in relation to the said Work Order, the petitioner invoked the Arbitration Agreement vide its notice dated 13.06.2018. The respondent, vide its response dated 18.06.2018 denied the existence of any Arbitration Agreement between the parties, forcing the petitioner to file the present petition.

3. Counsel for the respondent submits that the Work Order dated 31.05.2016 stood novated with the offer and acceptance of revised rates of entire work through exchange of correspondence starting from the offer of the petitioner vide e-mail dated 07.09.2017, acceptance of such rates by the respondent vide e-mail of the same date and final acceptance of the petitioner again by the e-mail of the same date. He submits that with the revision of the rates of the entire work, the original Work Order stood novated and in the revised Work Order there is no Arbitration Agreement between the parties. He further places reliance on the judgment of Bombay High Court in *Andheri Bridge View Co-op.Hsg. Society Ltd. v. Krishnakant Anandrao Deo and Others*, 1990 SCC OnLine Bom 305 to contend that with the revision of the rates a new agreement between the parties came into existence.

4. On the other hand, counsel for the petitioner submits that only the rates of the work had been revised by the parties, however, the other terms and conditions of the Work Order remained binding between the parties. He

submits that the Work Order contains various other terms and conditions between the parties including in relation to the testing, storing and handling of construction materials etc. Only because of revision of the rates by mutual consent, the Work Order did not cease to operate or be effective between the parties. He further places reliance on an e-mail dated 16.04.2018 addressed by the respondent to the petitioner, wherein the respondent itself had placed reliance on the Arbitration Agreement contained in Clause 44 of the Work Order.

5. I have considered the submissions made by the counsels for the parties. In the present case, the Work Order dated 31.05.2016 admittedly contained an Arbitration Agreement between the parties. The said Work Order, apart from the rates for the work as mentioned in Annexure 2 thereof, contained various other terms and conditions between the parties, which are described in Annexure 1,3 and Schedule A etc of the Work Order. The correspondence exchanged between the parties does not, at least *prima facie*, suggest that the parties intended to novate the entire Work Order by effecting the revision of the rates of work by exchange of e-mails dated 07.09.2017. In any case, this would be a question to be determined by the Arbitral Tribunal upon considering the evidence led by the parties on this issue.

6. The fact that the respondent has in e-mail dated 16.04.2018 placed reliance on the Arbitration Agreement between the parties as contained in the Work Order dated 31.05.2016 is also relevant, at least at this stage, to *prima facie* conclude that the respondent was not denying the existence of the Arbitration Agreement in spite of the revision of the rates by exchange of e-mails dated 07.09.2017.

7. In view of the above, I see no impediment in appointing a Sole Arbitrator for adjudicating the disputes that have arisen between the parties in relation to the abovementioned Work Order. I appoint **Justice S.P. Garg**, Retired Judge of this Court (7, Teen Murti Lane, New Delhi-110011 and D-72, Saket Court Residential Complex, Saket, New Delhi-110017, Mob. No.9910384627) as a Sole Arbitrator for adjudicating the disputes that have arisen between the parties in relation to the abovementioned Work Order. The Arbitrator shall give disclosure under Section 12 of the Act before proceeding with the reference.
8. It is made clear that the observations made by me in the present order are only *prima facie* in nature and shall not bind the Arbitrator or the parties.
9. The petition is allowed in the above terms, with no order as to cost.

OCTOBER 25, 2018/Arya

NAVIN CHAWLA, J