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IN THE HIGH COURT OF DELHI AT NEW DELHI

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ARB.P. 601/2018

GPT - RAHEE (JV)

..... Petitioner

Through: Mr.Ranjit Prakash Mr.Kamal Nijhawan,
Mr.Mujeeb Fazili, Mr.Sumit Gaur and Mr.Gaurav
Lavania, Advs.

versus

IRCON INTERNATIONAL LTD.

..... Respondent

Through: Mr.Suman Doval, Mr.Jatin Handoo,
Advs.

CORAM:

HON'BLE MR. JUSTICE NAVIN CHAWLA

ORDER

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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 a Sole Arbitrator for adjudicating the disputes that have arisen between the parties in relation to the following two Agreements:-

- (i) Agreement No. IRCON/2044/Ganga Bridge/05 dated 22.01.2009
- (ii) Agreement No. IRCON/2044/Ganga Bridge/07 dated 27.03.2009

2. The said Agreements contain Arbitration Agreements in form of Clauses 72.1.2 and 72.1.3 of the General Conditions of Contract.

3. Disputes having arisen between the parties, the petitioner invoked the Arbitration Agreement vide letters dated 27.03.2018. The respondent, however, in its response dated 25.04.2018 stated that

a full and final settlement had been arrived at between the parties in the meeting held on 10.9.2015 and, therefore, there is no further dispute to be adjudicated by an Arbitrator. The petitioner, therefore, filed the present petition.

4. Counsel for the respondent submits that the work in question was completed on 30.09.2015 (as far as the work of fabrication) and 30.04.2016 (as far as work of Assembly, erecting / launching), and the petitioner had submitted its final bill on 21.05.2016. Upon approval of the final bill, the petitioner had also executed No Claim Certificates on 13.12.2016 and therefore, there are no disputes to be adjudicated by an Arbitrator. In fact, with the full and final settlement of all claims, the Arbitration Agreement stood discharged. Counsel for the respondent further submits that it is after more than 1½ years that the petitioner suddenly woke up to raise further claims and seek appointment of an Arbitrator.

5. I have considered the submissions made by the counsel for the respondent, however, find no force in the same. Counsel for the petitioner has brought to my attention the covering letter dated 13.12.2016 which accompanied the No Claim Certificates issued by the petitioner. The said letter clearly indicates that the petitioner had reserved its rights to make further claims more particularly the ones stated by it in its earlier letter dated 09.12.2016. Counsel for the petitioner has further drawn my attention to clause 63 of the GCC, which reads as under:-

“63 FINAL MEASUREMENTS AND PAYMENTS

As soon as possible after completion of work, the

Contractor shall submit the final bill alongwith detailed measurements of work done, accountal of the materials, plant and machinery issued by the Engineer and all other statements, supporting documents required for finalisation of the bill. The final bill, measurements and documents submitted by the Contractor shall be scrutinized by the Engineer or his representative and in case the same are found not in order the Engineer shall direct the Contractor to re-submit the final bill alongwith all details. On receipt of all requisite details and final bill from the Contractor, the Engineer shall have the final measurements taken, recorded and signed jointly. An accountal of any plant, equipment and materials issued by the Engineer to the Contractor, shall also be prepared and signed jointly. Based on the final measurements and materials and plant and equipment accountal statements, the Engineer shall prepare the final bill.

The Contractor shall sign the Engineer's copy of the Final Bill Account in token of acceptance of the full and final value of the works performed under the contract, and submit a "No Claim Certificate" on the prescribed proforma alongwith a list of unsettled claims, if any. The Engineer shall then arrange to make payment against the final bill. The Contractor shall not be entitled to make any claim whatsoever against Engineer under or arising out of this contract, nor shall Engineer entertain or consider any such claim, if made by the Contractor after he shall have signed a "No – Claim Certificate" in favour of the Engineer. In case, the Contractor submits a list of unsettled claims alongwith the "No Claim Certificate", he shall not be entitled to submit any additional claims other than those submitted alongwith "No Claim Certificate."”

6. A similar clause is also there in the other contract.
7. In view of the above, at least at this stage, it cannot be said that with the execution of the No Claim Certificates, all disputes between the parties stood settled so as to completely discharge the Arbitration Agreement between the parties. Whether with the submission of the

final bill dated 21.05.2016 and the execution of the No Claim Certificates on 13.12.2016, all claims of the petitioner stood settled and the petitioner is barred from raising further claims, will be a question to be determined by the Arbitral Tribunal. At this stage and for the purpose of this petition, as the existence of the Arbitration Agreement in the two contracts and the due invocation thereof are not denied by the respondent, I see no impediment in appointing a Sole Arbitrator for adjudicating such disputes.

8. Counsel for the petitioner submits that two contracts form one integral part of the Project and therefore, one Arbitrator be appointed. At this stage, this submission cannot be accepted. However, I propose to appoint one common Arbitrator with respect to the disputes in both the contracts. The Arbitrator shall consider it as a separate reference in relation to the two Contracts, however, shall be free to decide the further procedure for such arbitration.

9. In view of the above, I appoint **Justice S.B.Sinha**, Retired Judge of the Supreme Court (D-96, (Basement), Defence Colony, New Delhi-110024, Mobile-9868219666, Ph. 011-24330353) as the Sole Arbitrator for adjudicating the disputes that have arisen between the parties in relation to the abovementioned Agreements. The Arbitrator shall give a disclosure under Section 12 of the Act before proceeding with the reference.

10. The petition is allowed in the above terms with no order as to costs.

11. All objections of the respondent shall remain open in such arbitration proceedings.

12. Any observation made by me hereinabove, will not bind the Arbitrator or either party in such arbitration proceedings.

NAVIN CHAWLA, J

OCTOBER 25, 2018
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