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

+ **ARB.P. 420/2017**

MASYC PROJECTS PRIVATE LIMITED Petitioner

Through: Mr Tarun Sharma with Ms Akanksha
Kapoor, Advocates.

versus

BHUSHAN STEEL LIMITED Respondent

Through: Mr Rohan Gupta, Advocate.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER

% **22.05.2018**

1. 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 between the parties in relation to the Purchase Order bearing No.3003000776 dated 08.10.2012. The said Purchase Order includes an arbitration clause, which reads as under:-

“22. Arbitration:

All disputes or differences, whatsoever, arising between the parties out of or in relation to the construction, meaning and operation or effect of this contract or breach thereof shall be settled amicably. If, however, the parties are not able to resolve them amicably, the same shall be settled by arbitration in accordance with the Rules of Arbitration of the Indian Council of Arbitration and the conciliation & Arbitration Act, 1996 and the award in pursuance thereof shall be binding on the parties.

Work under the Purchase Order shall be continued by you

during the arbitration proceedings unless otherwise directed in writing by us or unless the matter is such that the works cannot possibly be continued until the decision of the arbitrators or of the Umpire, as the case may be, is obtained and except as those which are otherwise expressly provided in the Purchase Order, no payment due or payable by BSL shall be with held on account of such arbitration proceedings, unless it is the subject matter or one of the subject matter thereof. The venue of the Arbitration shall be New Delhi.”

2. The petitioner had invoked the arbitration clause by a letter dated 17.05.2017. The respondent had neither nominated an arbitrator nor concurred to the sole arbitrator appointed by Indian Council of Arbitration. However, the existence of the arbitration clause is not disputed.
3. In view of the above, there is no dispute that an arbitration agreement exists between the parties and the same has been duly invoked. It is also apparent that the parties have been unable to concur on appointment of an arbitrator.
4. The present petition was moved before this Court on 12.07.2017. However, an arbitrator was not appointed in view of Section 14(1) of the Insolvency and Bankruptcy Code, 2016. The learned counsel for the respondent states that the management of the respondent has been taken over by Tata Steel Ltd. The learned counsel for the parties state that the moratorium under Section 14 of the Insolvency and Bankruptcy Code, 2016 has now been lifted and there is no impediment in the appointment of an arbitrator.
5. Accordingly, Mr R.C. Chopra, Retd. Judge, Delhi High Court (Mobile No. 9818097777), is appointed as an arbitrator to adjudicate the disputes in relation to the Purchase Order falling within the scope of arbitration clause

as set out above. This is subject to the arbitrator making the necessary disclosure under Section 12 of the Act and not being ineligible under Section 12(5) of the Act. The arbitrator shall fix the fee in consultation with the learned counsel for the parties and having regard to the fourth schedule of the Act. The parties are at liberty to approach the Arbitrator for further proceedings.

6. The petition is disposed of.

VIBHU BAKHRU, J

MAY 22, 2018

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