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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

ARBITRATION PETITION NO.151 OF 2017

The Automotive Research Association	]	
of India	]	
Having office at Survey NO.102, Vetal Hill	]	Petitioner
Off. Paud Road, Kothrud	]	
Pune 411 038	]	

V/s.

Indo Farm Equipment Limited	]	
A company registered under the Companies	]	
Act, 1956	]	Respondents
Regd.Office, S.C.O. 859, N.A.C.	]	
Chandigarh Kalka Road,	]	
Chandigarh 160 101	]	

- Mr. Vyas Hitesh Purshottam, for the Petitioner.
- Mr. Sunil Kadam, for respondent

CORAM : G. S. KULKARNI, J.

DATE : 12th June 2019.

ORAL JUDGMENT :

- 1] Heard learned counsel for the parties.
- 2] This petition is filed under Section 11 of the Arbitration and Conciliation Act, 1996 (for short, "Act"), whereby the petitioner has prayed

for appointment of an arbitral tribunal, for adjudication of the disputes and differences which had arisen between the parties under Purchase Order dated 29th September, 2010.

3] The case of the petitioner is that respondent by an email dated 8th June, 2010 addressed to the petitioner had approached the petitioner on issues regarding up-gradation of tremIII engine to tremIII A Emission norms, specifications of which were set out in the email. The petitioner responded to the said proposal of the respondent by issuing Project Proposal for up-gradation of 2.86 and liter 3 cylinder and 3.8 liter 4 cylinder engines. The specification and the scope of work was set out in clause No.4 of the project proposal and the engine specifications were set out in clause 2 of the said Project Proposal . In clause No.2.2, the details of cylinder are set out. In clause No.3 Emission Target was set out. In clause 4, scope of work was set out. Design Phase, for three cylinder and 4 cylinder Engine is set out in clause No.4.1. The other clauses upto 5.3 are clauses giving technical specifications. Clause 5 pertains to project schedule. Clause 6 pertains to project cost. Clause 7 pertains to payment terms and miscellaneous terms and conditions. Clause 8 pertains scope/responsibility of IFEL of the respondent. Clause 9 pertains to miscellaneous terms and conditions, in which clause No.9.12 is included pertaining to disputes to be

submitted to the arbitration. The said clause No.9.12 reads thus :-

"9.12 All disputes, arising from or in connection with the execution of the project, shall be settled through friendly discussion between the two parties. In case no settlement is reached, the disputes shall be submitted to Arbitration".

4] This project proposal which was forwarded by the petitioner to the respondent, thus, included the above arbitration clause that is clause No.9.12.

5] On receipt of the project proposal, respondent issued a letter of intent to the petitioner. The description as given in the said Letter of Intent reads thus :-

Sr.No.	Description	Price
1	Up-gradation of 2.86 liter 3 Cylinder and 3.81 liter 4 Cylinder Engines with Bharat (Trem) stage-IIIA Emission Norm Compliance (Scope of work as per your proposal ARAI/P?PTE/2010-11/16	125,00,000.00
	Rupees One crore twentyfive lacs only	Total Rs.125,00,000.00

6] Subsequent thereto purchase order dated 29th September, 2010 came to be issued by the respondent in favour of the petitioner, which also contain identical terms and conditions as contained in the Letter of Intent and in regard to the description of the goods. The relevant clause of

description of goods reads thus :-

"Up-gradation of 2.86 liter 3 Cyliner and 3.81 liter 4 Cylinder Engines with Bharat (Trem) Stage-IIIA Emission Norm Compliance (Engines Specifications and Scope of work as per your proposal".

7] What is important is that in terms and conditions of the purchase order, there are about 15 terms and conditions which are not disputed. In clause No.14, parties agreed that *"the contract shall be deemed to have been entered into at Chandigarh and all proceedings (if any) shall be filed and litigated in civil courts at Chandigarh and nowhere else"*.

8] In pursuant to the agreement as contained in the purchase order, the petitioner undertook the contractual work and raised the invoices, also certain payments were made. It appears that the disputes had arisen between the parties as seen from the correspondence exchanged between the parties from September, 2013 in regard to the up-gradation of time limit within which the same was required to be completed.

9] A legal notice dated 2nd September, 2014 was issued on behalf of the respondent. The petitioner by its letter dated 30th June, 2016 addressed to the respondent informed of the arbitral agreement as contained in clause 9 of the Project Proposal, calling upon respondent to appoint arbitrator to

adjudicate the disputes and differences between the parties. Respondent by its letter dated 14.7.2016, replied to the invocation notice of the petitioner stating that there is no arbitration agreement between the parties. The contents of the said letter are required to reproduce here, which reads thus:-

"This is with reference to your legal notice dated 30th June 2016 for the appointment of Arbitrator Justice (Retd) R.M. Bapat,. It is to bring to your kind notice that there is no arbitration clause No.9.12 in the agreed proposal under reference bearing No.ARAI/P/PTE/2010-11/16 dated 06.07.2010. So before proceeding in the matter, you are requested to supply me the copy of the said proposal dated 06.07.2010, having the aforesaid arbitration clause".

10] I have heard learned counsel for the parties and perused the record. It is quite clear that respondent had approached the petitioner for upgradation of its engine. A project proposal was submitted by the petitioner to the respondent. The project proposal contains conditions as stated above and one of the clause in the project proposal was clause No.9.12, which provided that the disputes arising from or in connection with the execution of the project, shall be settled through friendly discussion and in case no settlement is reached, it shall be submitted to arbitration.

11] Having considered the project proposal, respondent issued Letter of Intent dated 25th September, 2010, clearly specifying the terms and conditions. Letter of Intent would be required to be taken into consideration as offer which was made on behalf of the respondent. In the description column of this Letter of Intent, what is referred is the scope of work, as contained in clause No.4 of the project proposal. Letter of Intent does not indicate that there is acceptance of the other terms and conditions and more particularly the terms and conditions as set out in clause 9.12 of the project proposal, providing for arbitration. There is no other reference to the acceptance of any other conditions in the letter of Intent. The additional purchase order also does not show that there is any acceptance of the arbitration agreement, whereas clause No.14 of the Letter of Intent provides that the contract shall be deemed to have been entered into at Chandigarh and all proceedings (if any) shall be filed and litigated in civil courts at Chandigarh. This clearly indicates that the parties have agreed that disputes /litigations be agitated before the civil Court.

12] The petitioner despite this clear position on record overlooked the fact that contract is ultimately covered by Project Proposal and the terms and conditions agreed between the parties. Thereafter, even assuming that the purchase order/Letter of Intent is to be taken into consideration. What

is referred in the purchase order is only to the engine specification and it refers to the proposal of the petitioner. This would clearly indicate that the terms and conditions of the project proposal only were accepted by the respondent and what was accepted between the parties, was the terms and conditions of the purchase order dated 29.9.2010. Specific condition Nos. 1 to 15 as annexed to the purchase order. Thus the petitioner, by its notice dated 30th June, 2016 invoking arbitration agreement was not well founded. There is no arbitration agreement between the parties which could be invoked. Respondent, appropriately, by its letter dated 14.7.2016 informed the petitioner that there is no arbitration agreement. Clause No.1.12 as contained in the project proposal cannot be said to be binding between the parties. In fact it was agreed between the parties that all proceedings (if any) shall be filed and litigated in civil Courts at Chandigarh and nowhere else.

13] In view of clear position on record, the only submission as made on behalf of petitioner is that the project proposal is required to be considered so that the arbitration clause therein is recognized. The law in this regard is well settled, there has to be a clear intention of the parties to enter into arbitration agreement. On perusal of the project proposal, it is clear that the parties later on agreed that the contract shall be deemed to have been entered into at Chandigarh and all proceedings (if any) shall be filed and

litigated in civil Courts at Chandigarh and nowhere else. This clause 14 of the purchase order puts the things beyond a pale of doubt that the parties herein agreed to have any arbitration agreement. There is thus, no arbitration agreement between the parties.

14] In view of the above discussion, there is no merit in the present petition. Accordingly it is rejected.

[G. S. KULKARNI, J]