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

+ ARB.P. 78/2019

(24) ARB.P. 79/2019

(25) ARB.P. 80/2019

(26) ARB.P. 81/2019

(27) ARB.P. 82/2019

Date of Decision : 15th February, 2019

BHARAT HEAVY ELECTRICALS LIMITED Petitioner

Through: Mr.Kartik Nayar, Mr.Rishab
Kumar, Mr.Sarthak Malhotra, Advs.

versus

**UTTAR PRADESH RAJYA VIDHYUT UTPADAN NIGAM
LIMITED** Respondent

Through: Mr.Pradeep Misra, Mr.Daleep
Dhyani, Mr.Suraj Singh, Advs.

CORAM:

HON'BLE MR. JUSTICE NAVIN CHAWLA

NAVIN CHAWLA, J. (Oral)

1. These petitions have been filed by the petitioner seeking appointment of an Arbitrator for adjudicating the disputes that have arisen between the parties in relation to the following Letter(s) of Award:-

*“Arb. P. No.78/2019 - Letter of Award dated
26.03.2008*

*Arb.P. No.79/2019 - Letter of Award dated
26.03.2008*

*Arb.P. No.80/2019 - Letter of Award dated
09.08.2007*

Arb.P. No.81/2019 - Letter of Award dated 09.08.2007

Arb.P. No.82/2019 - Letter of Award dated 09.08.2007”

2. The Letters of Award admittedly contain an Arbitration Agreement between the parties. Though, the respondent has not filed any objection to the petitions, counsel appearing for the respondent has orally challenged the jurisdiction of this Court to entertain and adjudicate the present petitions. He has placed reliance on Clause 42 of the Letter of Award (in ARB.P. 80/2019) to contend that Form ‘A’ of UPRVUNL shall prevail over the General Conditions of Contract of BHEL. Clause 38 of Form A contains the Arbitration Agreement between the parties and Clause 38A thereof states that only Courts of competent jurisdiction under the High Court of judicature at Allahabad shall have jurisdiction on any action taken or proceedings initiated under the terms of the Agreement. He submits that therefore, only the High Court of Allahabad will have territorial jurisdiction to entertain the present petitions.

3. On the other hand, counsel for the petitioner submits that before filing of the present petitions, the petitioner had filed petitions under Section 9 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as the ‘Act’) before this Court being OMP (I) (COMM) 352/2018, 353/2018, 354/2018 and 355/2018 . In those petitions, the petitioner had categorically

made a submission that the above referred clause conferring exclusive jurisdiction in High Court of Allahabad cannot be given effect to.

4. Counsel for the petitioner, further submits that Clause 14 of the Letter of Award (in ARB. P. 80/2019) also purportedly confers exclusive jurisdiction to the Courts under the High Court of Judicature at Allahabad/Lucknow. The petitioner, in the above referred petitions under Section 9 of the Act *inter alia* challenged Clause 14 of the Letters of Award on the ground that the Courts at Allahabad/Lucknow would otherwise have no jurisdiction over the dispute and therefore, the parties by their conduct also cannot confer jurisdiction in the said Courts. The respondent, remained *ex parte* in three of these petitions, while in the fourth, after entering appearance, the respondent chose not to file any reply, including taking any objection on jurisdiction of this Court.

5. This Court by order dated 27.11.2018 passed in OMP(I)(Comm.) Nos.352/2018, 353/2018 and 354/2018, while confirming the interim order granted in favour of the petitioner on 06.09.2018, further directed as under:

“5.1 The petitioner will trigger the arbitration agreement on or before 05.12.2018. In case the needful is not done, the interim order dated 06.09.2018 will dissolve automatically.”

6. As far as the fourth petition was concerned, being OMP(I)(Comm.) No.355/2018, this Court by its order dated 17.01.2019 further directed as under:

“3. Given the aforesaid circumstances, learned counsel for the petitioner will ensure that Section 11 petitions come up for hearing before this Court within the next three weeks.

3.1 In the meanwhile, the interim order dated 06.09.2018, passed in the captioned matter, is made absolute. It is, however, made clear that if Section 11 petitions are not brought up for hearing before this Court within the next three weeks, the interim order dated 06.09.2018 will stand automatically dissolved.”

(Emphasis Supplied)

7. Counsel for the petitioner, relying on the above orders submits that the respondent therefore, never raised any objection on the territorial jurisdiction of this Court. In any case, as per Section 42 of the Act, only this Court would have jurisdiction to entertain the present petitions.

8. I have considered the submissions made by the counsels for the parties. Admittedly, no challenge was made to the petitions earlier filed by the petitioner before this Court. The said petitions have been disposed of granting relief in favour of the petitioner. No challenge has been made by the respondent to the said orders. Even in the present petitions, though opportunity was granted, reply was not filed by the respondent and only oral submission on challenge of jurisdiction was made.

The present petitions also categorically assert that this Court has territorial jurisdiction to entertain the present petitions.

9. In *AAA Landmark Pvt. Ltd. vs. AKME Projects Ltd. & Ors.* in Arb. P.No.418/2017, this Court by its order dated 21.02.2018, had held that where the parties agree not to insist upon the exclusive jurisdiction Clause in an Agreement or raise such objection and by their conduct waive such condition/submit themselves to another Court's jurisdiction, it cannot be said that the Court other than the one in which exclusive jurisdiction has been vested, would be without jurisdiction. In any case, if the respondent is to raise any objection on the jurisdiction of the Court, it has to be so raised in the earlier petitions filed by the petitioner under Section 9 of the Act.

10. In view of the above, I do not find merit in the objection raised by the counsel for the respondent.

11. As the existence of the Arbitration Agreement and due invocation thereof remain uncontested, I see no impediment in appointing a Sole Arbitrator for adjudicating the disputes that have arisen between the parties in relation to the above mentioned Letters of Award. I appoint **Mr. Justice Dipak Misra**, Retired Chief Justice of India, (R/o 97, Ground Floor, Sukhdev Vihar, New Delhi-110025, Mobile: 9650110057) as a Sole Arbitrator for adjudicating such disputes. The Arbitrator shall give a disclosure under Section 12 of the Act before

proceeding with the reference. The Arbitrator shall consider this to be a separate reference for each petition, however, shall be free to pass any other or further procedural orders regarding conduct of such arbitration proceedings.

12. The petitions are allowed in the above terms, with no order as to costs.

NAVIN CHAWLA, J

FEBRUARY 15, 2019
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