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

+ **ARB.P. 259/2018**

ZAGSON ENGINEERING LTD. Petitioner

Through: Mr. F. Hasan, Advocate

versus

ENERGO CONSTRUCTION LTD. Respondent

Through: Mr. Dushyant Manocha, Advocate

CORAM:

HON'BLE MR. JUSTICE RAJIV SHAKDHER

ORDER

% **22.02.2019**

1. This is a petition in which prayer is made for appointment of an Arbitrator *vis-a-vis* the contract obtaining between the parties.

2. It emerges that three (3) Letters of Intent (LOIs) were issued and against the three (3) LOIs, work order was issued only against one of those three (3) LOIs.

3. The LOIs in which work orders were not issued by the respondents bear the following particulars:-

(i) *EEPL/LOI-IL & FS/ZEL-TECHSTR & MECH ERECTION, dated 20.11.2014, in the sum of Rs.73,16,500/-.*

(ii) *ECL/WO/ILFS/ Ele Dre/001, dated 16.02.2015, in the sum of Rs. 23,19,582/-.*

4. To be noted, the third LOI in respect of which as noted above, work order was in fact issued is described as follows:-

ECL/WO/ILPS/Ele Ere/011, dated 16.02.2015, in the sum of Rs. 4,09,702/-.

4.1 The work order admittedly contains an Arbitration agreement.

5. Therefore, counsel for the respondent says that if at all an Arbitrator can be appointed it can only be appointed *vis-a-vis* work order issued in respect of the third LOI described in paragraph 4 above. Insofar as the other two LOIs are concerned, no Arbitrator can be appointed as a work order was not issued, which, *albeit*, contains in a printed format the arbitration clause.

6. However, counsel for the respondent says that if the petitioner were to file a suit action *vis-a-vis* all three Letter of Intents, the respondent will not seek interdiction of such proceedings by moving an application under Section 8 of the Arbitration and Conciliation Act, 1996 in respect of the third LOI.

7. Given these circumstances, counsel for the petitioner seeks to withdraw the captioned petition with liberty to file a suit action, *albeit*, in accordance with law.

8. Statement of counsel for the respondent *vis-a-vis* the third LOI is taken on record.

9. The petition is disposed of in the aforesaid terms.

RAJIV SHAKDHER, J.

FEBRUARY 22, 2019/c
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