

\$~3

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

+ ARB.P. 528/2018

ANTARA PURUKUL SENIOR LIVING LIMITED Petitioner

Through: Mr. Achal Gupta, Advocate.

versus

CONTINENTAL EQUIPMENT INDIA PVT. LTD. Respondent

Through: None.

CORAM:

HON'BLE MR. JUSTICE RAJIV SHAKDHER

ORDER

% **10.01.2019**

1. This is a petition filed under Section 11 of the Arbitration and Conciliation Act, 1996 (in short '1996 Act') for appointment of Arbitrator. Notice in this petition was issued on 25.07.2018. Notice was made returnable on 14.09.2018. The record shows that despite the respondent having been served via courier as well as through e-mail, it has chosen to not enter appearance in the matter.

2. The record also shows that this is the second round of litigation. In the first round the Arbitrator accepted the objection raised on behalf of respondent that he had no jurisdiction in the matter as the arbitration agreement required the parties to agree to his appointment. According to him the element of mutuality was missing. This decision was rendered by the learned Arbitrator on 05.06.2018.

3. Thus, in these circumstances the petitioner has approached this Court for appointment of an Arbitrator.

4. The record shows that the purchase order dated 17.09.2015 was raised by the petitioner on the respondent. Under the said purchase order, respondent was to supply the equipments as referred to therein for which consideration was pegged at Rs.78,04,648/-.

5. It is not disputed that the respondent had also furnished a corporate and a performance bank guarantee. According to the petitioner the Performance bank guarantee was worth Rs. 3,90,232.

6. According to the petitioner, the supplies made by the respondent did not commensurate with the advance payment made by the petitioner. This aspect emerges upon perusal of the notice dated 25.05.2017 served by the Advocates of the petitioner on the respondent. As per this notice at that relevant point in time the respondent had failed to make supplies of equipments worth Rs.16,73,074/-. The petitioner further claims that after adjustment of the amount in respect of supplies made, there was a sum of Rs.13,51,735/- outstanding as on the date of the issuance of the aforementioned notice.

6.1 It is also the case of the petitioner that the performance bank guarantee was not renewed and hence could not be encashed.

7. It is in these circumstances that the first round of litigation before learned Arbitrator was triggered by the petitioner.

8. As indicated above, the learned Arbitrator could not decide the matter on merits on account of challenge to his jurisdiction.

9. Having regard to the fact that there is dispute obtaining between the parties and given the fact an arbitration agreement is in subsistence, I am inclined to allow the petition.

10. Accordingly, Ms. Mini Pushkarna, Advocate (Contact Nos.: 9810674872, 011-28535908) (Address: Chamber No. 346-A, Block-I, Delhi

High Court, New Delhi; F-254, Vikaspuri, New Delhi- 110018) is appointed as an Arbitrator.

10.1 The learned Arbitrator shall be paid his fees in terms of the provisions of the Fourth Schedule appended to the Arbitration and Conciliation Act, 1996.

10.2 The learned Arbitrator before proceeding further in the matter will issue notice to the respondent.

10.3 Before entering upon reference, the learned Arbitrator will file a declaration as required under Section 12 and other attendant provisions of the 1996 Act.

11. The Registry shall dispatch a copy of this order to the learned Arbitrator.

12. Since pleadings were completed before the earlier Arbitrator, the proceedings will commence from the stage of the pleadings.

13. The petition is disposed of in the above terms.

RAJIV SHAKDHER, J

JANUARY 10, 2019

hs