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IN THE HIGH COURT OF DELHI AT NEW DELHI

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ARB.P. 817/2019

M/S BALA SUNDARI CONST. CO Petitioner

Through Mr.Raghav Agrawal, Adv.

versus

UNION OF INDIA Respondent

Through Mr.J.K.Singh with Mr.Saurabh
Sharma, Advs.

CORAM:

HON'BLE MS. JUSTICE REKHA PALLI

ORDER

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14.02.2020

1. This is a petition under Section 11 of the Arbitration and Conciliation Act, 1996 praying for appointment of an Arbitrator to adjudicate the disputes and differences which have arisen between the parties in relation to work contract awarded to the petitioner vide acceptance letter dated 16.05.2017.

2. Learned counsel for the petitioner submits that the arbitral clause contained in paragraph 64(1)(i) of the General Conditions of Contract (GCC) had been invoked by the petitioner by way of a legal notice dated 23.08.2018 to which no reply was received from the respondent. Thereafter, the petitioner once again invoked arbitration vide its letter dated 23.09.2019, which was declined by the respondent on 07.10.2019.

3. On 15.01.2020, learned counsel for the respondent was granted time to get instructions. Today, he submits that once the petitioner

had signed a 'No Claim Certificate', he is estopped from subsequently raising a dispute regarding the correctness of the items covered under the 'No Claims Certificate'. He, therefore, contends that in the light of this certificate, the petitioner's claims are barred under Clause 43(2) of the GCC and are no longer arbitrable. He, therefore, prays that the petition be rejected.

4. Having considered the submissions of the learned counsel for the parties, I am of the view that the issue whether the petitioner's claims fall within the ambit of Clause 43(2) of the GCC or are barred, in any manner, is contentious. This issue, therefore, ought not to be decided by the Court in these proceedings as it needs to be determined by the learned Arbitrator.

5. The petition is accordingly allowed and Justice Vinod Goel (Rtd.) (Mob:9910384637) is appointed as the sole Arbitrator to adjudicate the disputes and differences which have arisen between the parties in reference to agreement dated 16.05.2017. It is made clear that it will be open for the respondents to take all permissible pleas before the learned Arbitrator including the plea that the petitioner's claim are barred under clause 43(2) of the GCC.

6. The arbitration shall be conducted under the aegis of Delhi International Arbitration Centre (DIAC).

7. Before commencing arbitration proceedings, the Arbitrator will ensure compliance of Section 12 of the Arbitration and Conciliation Act, 1996.

8. A copy of this order be sent to Delhi International Arbitration Centre (DIAC) as also to the learned Arbitrator.

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

FEBRUARY 14, 2020/sr

REKHA PALLI, J