

Via video conferencing

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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **ARB.P. 722/2019**

PRAGATI CONSTRUCTION CONSULTANTS Petitioner

Through Mr.Vivekanand, Adv.

versus

UNION OF INDIA & ANR. Respondent

Through Mr.Jagjit Singh, S.C.

CORAM:

HON'BLE MS. JUSTICE REKHA PALLI

ORDER

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03.09.2020

I.A.7565/2020

1. This is an application filed by the petitioner seeking a direction to refer the petitioner's claim nos.1, 7, 8 and 10 as set out in para 7(XLIII) of its petition under Section 11 of the Arbitration and Conciliation Act, 1996.

2. Learned counsel for the petitioner submits that after the filing of the present petition, wherein the petitioner has sought appointment of an Arbitral Tribunal for adjudication of its ten claims, the respondents have, on their own, appointed a three member Arbitral Tribunal, referring only six of the petitioner's claims. By placing reliance on a decision of the Coordinate Bench of this Court in ***CSE Infra v. Union of India [Arb.P.186/2017]***, he prays that the remaining four claims be also referred to the same Tribunal.

3. On 01.09.2020, when the present application was taken up for

consideration, Mr.Jagjit Singh, learned counsel for the respondents was granted time to obtain instructions. Today, he submits that the petitioner's four claims, which have not be referred to the Arbitral Tribunal, fall within the category of excepted matters and have, therefore, rightly not been referred for adjudication. Mr.Singh is, however, not in a position to dispute that this aspect is squarely covered against the respondents by the decision of this Court in ***CSE Infra (supra)***.

4. In the light of the aforesaid stand taken by the parties and following the dictum in ***CSE Infra(supra)***, I am of the view that the application deserves to be allowed. Accordingly, the petitioner's claim nos.1, 7, 8 and 10, which read as under, are referred to the same Arbitral Tribunal, which stands constituted by the respondent vide letter dated 03.02.2020. Needless to state that the questions as to whether, these claims are arbitrable or not and whether the respondents' objection that the same fall within the category of excepted matters would be determined by the learned Arbitral Tribunal as per law.

<i>S.No.</i>	<i>Details of Claims</i>	<i>Amount</i>
<i>Claim No.1</i>	<i>Prolongation as per Hudson Formula, each and every subsequent expiry of completion period (i.e. period considered after 1st Invocation of Arbitration)</i>	<i>Rs.60,00,000/-</i>
<i>Claim No.7</i>	<i>Extra Expenditure incurred for BG extension charges, commission charges, for extended period for contract and upto date charges till date of release.</i>	<i>Rs. 5,00,000/- or more or as per actual (whichever is more)</i>
<i>Claim No.8</i>	<i>Interest on above amount starting from</i>	<i>As per Actual</i>

	<i>invocation of Arbitration Clause till date of payment @ 12%p.a.</i>	<i>Calculation</i>
<i>Claim No.10</i>	<i>Infructuous Expenses incurred due to cancellation of Block for launching of 14 girders</i>	<i>Rs.49,61,550/-</i>

5. As the petitioner has already filed its statement of claims in respect of its other claims already referred to arbitration, the petitioner is granted two weeks time to file an amended statement of claims in respect of the aforesaid four claims, whereafter the learned Tribunal will proceed in accordance with law.

6. It is, however, made clear that merely because four additional claims of the petitioner are being referred to arbitration, it would not be seen as an expression of any opinion by this Court as to whether, they are, in fact, arbitrable or not. It will, therefore, be open for the learned Tribunal to consider these claims in accordance with law, by taking into consideration the stand of the respondent that the claims are not maintainable on account of the same being excepted matters.

7. The application stands disposed of.

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8. In view of the order passed hereinabove, the present petition is rendered infructuous and is accordingly disposed of.

REKHA PALLI, J

SEPTEMBER 3, 2020

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