

\$~2 (original side)

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

+ **ARB.P. 385/2020 & I.A. 8197/2020**

M/S VAISHNO WIRE PVT. LTD Petitioner

Through: Mr. Vinay Kumar and
Mr. Manan Aggarwal, Advs.

versus

M/S SMODI INFRASTEEL PVT. LTD. Respondent

Through: Mr. Kunal Tandon and
Ms. Richa Sandilya, Advs.

CORAM:

HON'BLE MR. JUSTICE C. HARI SHANKAR

ORDER (O R A L)

%

17.09.2020

(Video-Conferencing)

1. This petition under Section 11(6) of the Arbitration & Conciliation Act, 1996 (hereinafter referred to as the "1996 Act"), seeks appointment of an arbitrator, to arbitrate on the disputes between the parties.

2. Issue notice. Notice is accepted by Mr. Kunal Tandon, learned Counsel for the respondent.

3. With the consent of the parties, the petition is taken up for final disposal.

4. The disputes between the parties emanate from a contract, whereunder the respondent supplied material for a construction project of the petitioner. There are various allegations and counter allegations, between the petitioner and the respondent, with which this Court is not required to involve itself, for the present purpose.

5. Section 13 of the PEB Techno-Commercial Proposal dated 22nd July, 2019 contains the arbitration clause, between the parties, and reads thus:

" ... In case of any disagreement or dispute, controversy, claim arising, regarding any matter then either party shall give to other party will issue a notice in writing of such dispute and differences and the same shall be discussed and resolved amicably. In case the dispute or differences is not resolved within 30 days, then the same be referred to arbitration in accordance with the provision of arbitration and conciliation act 1996 or any statutory modification and the rule made there under. The venue for arbitration shall be New Delhi, India and all the proceeding shall be in English language only. Both the party shall have binding to agree to the jurisdiction and the powers of the arbitrator, appointed as aforesaid and agrees to be bound by the decision and award of the said arbitrator".

6. Consequent to disputes arising between the parties, the petitioner invoked the aforesaid arbitration clause *vide* notice dated 30th July, 2020, which suggested the name of an arbitrator, to arbitrate on the disputes.

7. The respondent, however, was not agreeable to arbitration of the disputes by the arbitrator suggested by the petitioner, and

communicated as much, *vide* reply dated 5th August, 2020.

8. As such, the parties have been unable to arrive at a consensus regarding the sole arbitrator, who would arbitrate on the disputes between them, necessitating the intervention of this Court in view of Section 11(6) of the 1996 Act.

9. Mr. Kunal Tandon, learned Counsel for the respondent suggests that the matter may be referred to the Delhi International Arbitration Centre as he has certain counter claims against the claims preferred by the petitioner.

10. I am of the opinion that the suggestion is well taken and merits acceptance.

11. In view thereof, this petition is disposed of by referring the parties to the Delhi International Arbitration Centre (DIAC), to nominate an arbitrator to arbitrate on the disputes between the parties. The DIAC would also consider the issue of referring the counter claims of the respondent for arbitration.

12. The DIAC would act in accordance with its rules, regulations and procedure, and the fees payable to the arbitrator would also be according to the schedule of fees maintained by the DIAC.

13. The parties may appear before the DIAC on 21st September, 2020 at 2 p.m., alongwith a copy of this order.

14. The petition alongwith the pending application stand disposed

of in the aforesaid terms.

C. HARI SHANKAR, J.

SEPTEMBER 17, 2020/kr

