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

% Judgment delivered on: 30th March, 2022

+ ARB.P. 1199/2021

M/S SUDHIR POWER PROJECTS LTD Petitioner

versus

M/S UNIPOWER PROJECTS PVT. LTD. Respondent

Advocates who appeared in this case:

For the Appellants: Mr. Manish Kumar, Mr. Piyush Kaushik, Mr. Nakul Jain
and Ms. Hyyat Ahluwalia, Advocates

For the Respondent: Mr. Gurpreet Singh Sachdeva, Advocate

CORAM:-

HON'BLE MR. JUSTICE SANJEEV SACHDEVA

JUDGMENT

SANJEEV SACHDEVA, J

1. Petitioner seeks appointment of an Arbitrator under Section 11(5) of the Arbitration & Conciliation Act, 1996.
2. It is contended that the parties had entered into an agreement and a work order was placed on the respondent dated 11.06.2021 which contains an arbitration clause.
3. The Arbitration Clause 19 reads as under: -

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“19. Dispute Resolution / Arbitration & jurisdiction:

Any dispute or difference whatsoever arising between the parties out of or relating to the construction, meaning, scope operation or effect of this contract or the validity or the breach thereof shall be settled by arbitration in accordance with Arbitration and Conciliation Act, 1996 and the award made in pursuance thereof shall be binding on the parties. The dispute shall be referred to the arbitration of Sole Arbitrator to be appointed by CMD/MD of SPPL, whereas Seat and venue of the arbitration shall be New Delhi/Gurugram and the proceedings shall be undertaken in English.”

4. Learned counsel for the petitioner submits that the registered office of both petitioner as well as respondent is in Delhi and accordingly petitioner has exercised the option to approach the Courts at Delhi.

5. Learned counsel for the petitioner submits that earlier a Purchase Order was sent by email dated 11.06.2021 and all the terms and conditions were contained in the Purchase Order and Respondents were requested to accept the same. However, the Respondent by their email dated 12.06.2021 raised certain issues with regard to the terms of payment.

6. Subsequently a revised Purchase Order was sent on 17.06.2021 revising the terms of payment. Clause 19 of both the Purchase Orders



remained the same. It is stated that by e-mail dated 17.06.2021, respondent accepted the Purchase Order with the terms mentioned therein.

7. Only objection raised by the respondent in these proceedings to the appointment of an Arbitrator is that there is no written agreement between the parties. The email by which the Purchase Order and the terms therein have been accepted are not denied.

8. Learned counsel for the respondent further submits that the purchase of order referred to by the petitioner is merely a work order and not a purchase order.

9. Perusal of the Purchase Order dated 11.06.2021 shows that the same bears a heading “work order/contract”. The email with which the same has been sent mentions the same as a Purchase Order. However, nothing really turns on the description of the document as the said document contains several terms and conditions and one of the terms being clause 19 containing the Arbitration Clause extracted hereinabove.

10. Further the petitioner has also placed on record the communication dated 13.09.2021 sent by the respondent acknowledging the work order dated 11.06.2021 referred to herein above.



11. Section 7 of the Arbitration and Conciliation Act, 1996, *inter-alia*, stipulates that an arbitration agreement is in writing, if it is contained in exchange of letters, italics telegrams or other means of telecommunications including communication through electronic means.

12. The very fact that petitioner had sent a Purchase Order contacting the terms and conditions of the contract requesting the respondent to accept the same and the said email and Purchase Order is admittedly received by the respondent and respondent by their email have not only acknowledged the receipt but specifically stated that they accept the PO along with its terms.

13. Said exchange of correspondence clearly satisfies the requirement of a written agreement between the parties as envisaged in Section 7 (4) (b) of the Arbitration Act. None of the emails or the communication placed on record by the petitioner are denied by the respondent.

14. In view of the above, this petition is allowed.

15. The disputes are referred to the Delhi International Arbitration Centre (DIAC), which would appoint an arbitrator to arbitrate the disputes. The arbitration shall take place under the aegis of the DIAC in accordance with its rules and regulations.



16. The arbitrator would be entitled to charge fees in accordance with the schedule of fee stipulated by the DIAC.

17. The arbitrator shall furnish the requisite disclosure under section 12(2) of the Arbitration and Conciliation Act, 1996 within one week of entering reference.

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

MARCH 30, 2022
'rs'

SANJEEV SACHDEVA, J

