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

+ **ARB.P. 680/2020**

BBR (INDIA) PVT LTD Petitioner
Through **Mr. M. Dutta, Adv.**

versus

SHAPOORJI PALLONJI AND CO LTD Respondent
Through **Mr. Aslam Ahmed, Adv.**

CORAM:
HON'BLE MR. JUSTICE C. HARI SHANKAR

ORDER (ORAL)

% **19.03.2021**

ARB.P. 680/2020 and IAs 4169/2021 (Condonation of delay) and 4170/2021 (Order I Rule 10 CPC)

1. M/s. BBR (India) Pvt Ltd seeks, by means of this petition under Section 11(6) of the Arbitration and Conciliation Act, 1996 ("1996 Act"), reference of the disputes between the petitioner and the respondent to arbitration, in accordance with Clause 13 of the Work Order dated 3rd October, 2012, which reads as under:

"Settlement of Dispute and Arbitration

All disputes or difference of opinions, on account of interpretation of Clauses, technical specification etc. shall be resolved through direct and mutual discussions at site level. In the case of difference of opinion still persisting, then the matter shall be referred to regional head, at respective region. However, in case parties fail to reach amicable settlement, the matter shall be referred to arbitration. The arbitration shall be governed as per Indian Arbitration & Conciliation Act, 1996 and shall be held in New Delhi"

2. *Vide* the aforesaid Work Order dated 3rd October, 2012, the respondent engaged services of the petitioner as a sub-contractor, in connection with perpetual contract dated 23rd July, 2012 between DLF and the respondent. The claim of the petitioner is that an amount of ₹ 99,23,896/- remains outstanding, to be paid to the petitioner for the work executed by it under the aforesaid Work Order.

3. The petitioner issued a legal notice dated 27th January, 2020, to the respondent, calling upon the respondent to pay the said amount, failing which the petitioner stated that it would seek recourse to the arbitral process contemplated by the Work Order.

4. Learned counsel for the respondent does not contest the existence of the arbitration agreement between the parties or the fact that the dispute is arbitrable in nature. He further submits that DLF would be a necessary party to this dispute, as the Work Order executed between the petitioner and the respondent was in the nature of a sub-contract, on back to back basis, with the contract dated 23rd July, 2012 between the DLF and the respondent.

5. This objection, in my view, would more appropriately be required to be addressed before the learned Arbitral Tribunal constituted by this Court, as the learned Arbitral Tribunal would be well within its powers to examine whether DLF as a necessary party to the arbitral proceedings.

6. That a party, who is a stranger to the arbitration agreement may

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also be included in the arbitral proceedings, if its interests are affected or inclusion is otherwise necessary, in the interest of justice, is well settled. (Refer *Charan Properties Ltd. v. Kasture & Sons*¹ and *Chloro Controls (India) Pvt. Ltd. v. Severn Treat Water Purification Inc*²).

7. This issue, therefore, is left open to be agitated by the respondent before the learned Arbitral Tribunal.

8. There is no other challenge to the petition. There is, *ex facie*, an arbitration agreement between the parties. The dispute is arbitrable in nature. As such, the prayer for appointment of an arbitrator deserves to be granted.

9. Accordingly, this Court appoints Mr. O.P.Gupta, retired District & Sessions Judge as the arbitrator to arbitrate on the disputes between the parties. The details of the learned arbitrator are as under:

Mr. O.P. Gupta (Retd.),
District & Sessions Judge
R/o BQ-87, Shalimar Bagh,
Delhi-110088
(Mob: 9910384645)

10. The learned arbitrator would file the requisite disclosure under Section 12(2) of the 1996 Act within a week of entering on the reference.

11. The learned arbitrator would be entitled to fees in accordance

¹ (2018) 16 SCC 413

² (2013) 2 SCC 641

with Fourth Schedule to the 1996 Act.

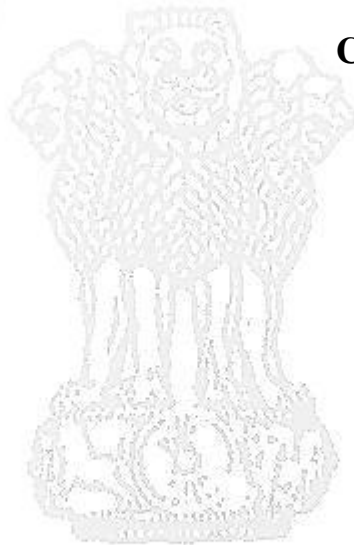
12. Learned counsel for the parties may proceed to contact the learned Arbitrator at the aforesaid contact details, so that the arbitral proceedings could commence.

13. With the aforesaid observations, this petition, alongwith IA 4169/2021 and IA 4170/2021, stand disposed of.

MARCH 19, 2021

r.bararia

C.HARI SHANKAR, J



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