$~7 (original)

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

\+ O.M.P.(I) (COMM.) 48/2021 & I.A.1768/2021, I.A.1769/2021, I.A.2669/2021

M/S ROLLFORM EQUIPMENT PVT. LTD. ..... Petitioner
Through: Mr. Divya Jyoti Sing, Adv.

versus

M/S HEMA ENGINEERING INDUSTRIES LIMITED
..... Respondent
Through: Mr. Vikas Dutta and Mr.Siddharth Silwal, Advs.

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

O R D E R (O R A L)

% **22.02.2021**

1. This petition under Section 9 of the Arbitration & Conciliation Act, 1996 (hereinafter referred to as "the 1996 Act") emanates out of a proposal dated 20th July, 2018, by the petitioner to the respondent, for manufacture and sale of tube mill and other steel processing equipment, for a total value of ₹ 7.8 crores. This proposal, it is averred, enclosed Standard Terms and Conditions of Sale (referred to, in brief, as "STS").

2. The petitioner relies on Clauses 9 and 10 of Annexure VI, submitted to the respondent under cover of letter dated 23rd July, 2018, which provide thus:

> "9. All disputes or differences whatsoever arising between the purchaser and **ROLLFORM EQUIPMENT (PVT.) LTD.** out of the construction, meaning and operation or affect of this contract or breach shall be settled by arbitration with the rules of arbitration of the Indian Council of Arbitration and the award made in the pursuance there of shall be binding on the parties. The venue of such arbitration shall be Delhi.
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> 10. All goods manufactured by **ROLLFORM EQUIPMENT (PVT.) LTD.** are made to order. Hence, cancellation of the orders will not be accepted under any circumstances."

3. It is averred, in the petition, that, on 21st July, 2018, the respondent issued a Letter of Intent, whereby the petitioner's proposal was approved, resulting in the formation of a contract and coming into force of the aforesaid arbitration agreement. I may note, even at this juncture, that Mr. Vikas Dutta, learned counsel for the respondent disputes this assertion and submits that the letter dated 21st July, 2018 effectively modified the terms of the proposal as put forward by the petitioner and that, therefore, no concluded contract could be set to come into being. However, keeping in view the law laid down in various decisions, including ***Nimet Resources. Inc. v. Esaar Steel Ltd.***[1] and ***Vidya Drolia v. Durga Trading Corpn.***[2], I am of the opinion that the issue of existence or non-existence of the arbitral agreement is arguable and appropriately ought to be considered by the arbitral tribunal.

4. Consequent to the aforesaid Letter of Intent dated 21st July, 2018, a purchase order was issued by the respondent to the petitioner

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[1] **(2000) 7 SCC 497**
[2] **2020 SCC OnLine SC 1018**

on 21st August, 2018. It is not necessary for this Court, in the present order, to go into further detail in respect of the disputes between the parties. Suffice it to state that the grievance of the petitioner appears to be that the respondent defaulted in payments to the petitioner, resulting in an amount of ₹ 4,80,37,050/- remaining outstanding from the respondent to the petitioner. The petitioner also avers that, owing to the inaction of the respondent in lifting the equipment which the petitioner had ready, the petitioner had to dispose of one tube mill at a loss of ₹ 22 lakhs. Learned Counsel for the respondent submits that no evidence, in this regard, has been placed on record and that, in fact, the petition is also silent regarding the amount for which the tube mill was sold.

5. All these matters, in my view, are disputed issues of fact which would, appropriately have to be decided by the Arbitral Tribunal – assuming that a valid arbitration agreement is found to exist between the parties.

6. Learned Counsel for the parties are, *ad idem,* agreeable to the matter being referred to the Indian Council for Arbitration, to appoint an arbitrator to arbitrate on the disputes between the parties, in accordance with the rules of arbitration of the Indian Council of Arbitration and for the present petition to be treated as an application under Section 17 of the 1996 Act, to be decided by the arbitrator to be so appointed.

7. In view thereof, this petition is disposed of in the following terms:

(i) The parties are referred to the Indian Council for Arbitration, which would proceed to appoint an arbitrator, to arbitrate on the disputes between the parties. All questions of facts and law between the parties are left open, including the issue of the existence of an arbitration agreement.

(ii) The arbitrator would conduct the arbitration in accordance with the rules of the Indian Council for Arbitration and the fees of the learned Arbitrator would also be determined by the Indian Council for Arbitration as per its rules and regulations.

(iii) The present petition shall be treated as an application under Section 17 of the 1996 Act and decided by the learned Arbitrator as expeditiously as possible and preferably within the period of four weeks from the learned Arbitrator entering on the reference.

(iv) The learned Arbitrator would also furnish the requisite disclosure under Section 12(2) of the 1996 Act within two weeks of entering on the reference.

8. The petition stands disposed of in the aforesaid terms with no orders as to costs.

C.HARI SHANKAR, J

FEBRUARY 22, 2021/kr