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

% ***Date of decision: 16.07.2021***

+ **ARB.P. 544/2021**

VASAVI POWER SERVICES PVT. LTD. Petitioner
Through: **Mr. Sunil K. Mittal & Mr. Sameer
Dawar, Advocates**

Versus

BHARAT HEAVY ELECTRICALS LTD. Respondent
Through: **Mr. Kartik Nayar, Advocate**

CORAM:

HON'BLE MR. JUSTICE SURESH KUMAR KAIT

JUDGMENT (oral)

The hearing has been conducted through video conferencing.

1. The present petition is preferred by the petitioner under Section 11 of the Arbitration & Conciliation Act, 1996 seeking appointment of an Arbitrator in the present case for adjudicating the disputes between the parties.
2. The Petitioner is a MSME Company, who is said to have executed MEI (Mechanical, Electrical & Instrumentation) Erection Testing & Commissioning Projects for over 30 years across India, Middle East and Africa.

3. The crux of the case, as spelt out in the petition, is that on 26.11.2009, petitioner and respondent executed an Agreement for “erection, testing, commissioning, and trial operation of TG sets, ELECTRICAL, C & I and BOP packages for 4x125 MW Power Plant in Kosti, Sudan (Package-2/Contract Document No.646/2009)” and the total value of the work awarded was US\$15,500,000 with the schedule commencement date as 24.11.2009 and the stipulated time period of completion was 21 months.

4. According to petitioner, it deployed/ engaged all resources like Engineers, Supervisors, etc. and also procured Tools & Plants, Shuttering Material, etc. which was required to execute and complete the work within the scheduled time. However, despite petitioner's diligent efforts to execute the work on time, the respondent kept on delaying the same and the petitioner faced various hindrances, attributable to the respondent.

5. On the other hand, respondent has denied the averments made on behalf of the petitioner stating that petitioner had filed a petition under Section 9 of the Act [OMP (I) (COMM) 72/2021] and by virtue of order dated 10.03.2021, the claims made by petitioner stand fully settled and discharged.

6. Pertinently, petitioner on 09.04.2021, sent a Notice under Clause 33 of the Contract No. 646/2009 dated 26.11.2009 r/w Section 11 of the Arbitration & Conciliation Act, 1996 for appointment of a sole Arbitrator.

7. At the hearing, learned counsel for petitioner submitted that various disputes have arisen between the parties and these disputes can be settled in terms of Arbitration Agreement between the parties, as contained in Clause 33 of Section 11 of Arbitration & Conciliation Act, 1996.

8. Though the aforesaid submission of petitioner's counsel is disputed by counsel for respondent, however, he has not controverted that a quietus has to be given to the disputes between the parties by appointing an Arbitrator.

9. In view of the above, the present petition is allowed. Accordingly, Justice Pradeep Nandrajog, former Chief Justice of the High Court at Bombay (Mobile: 9818000130), is appointed as the Sole Arbitrator to adjudicate the disputes between the parties. All the issues raised by the parties shall remain open and shall be decided by the Arbitrator as per law.

10. The fee of the learned Arbitrator shall be governed by the Fourth Schedule of the Arbitration and Conciliation Act, 1996.

11. A copy of this order be sent to learned Arbitrator for information.
12. With aforesaid directions, the present petition is accordingly disposed of.

(SURESH KUMAR KAIT)
JUDGE

JULY 16, 2021
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