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

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Date of decision: 29.07.2021

+ **ARB.P. 632/2021**

ENKEBEE INFRATECH INDIA PRIVATE LIMITED

.....Petitioner

Through: Mr. Ayush Aggarwal, Mr. Samrat
Sengupta, & Mr. Parag Chaturvedi,
Advocates

Versus

BHARAT HEAVY ELECTRICALS LTD.

..... Respondent

Through: Ms. Mayuri Raghuvanshi &
Mr. Vyom Raghuvanshi, Advocates

CORAM:

HON'BLE MR. JUSTICE SURESH KUMAR KAIT

J U D G M E N T (oral)

The hearing has been conducted through video conferencing.

1. Petitioner is a company incorporated under the Companies Act, 2014 and has preferred the present petition under the provisions of Section 11 of Arbitration and Conciliation Act, 1996 seeking appointment of an Arbitrator for adjudication of disputes with respondent.

2. Petitioner-company is engaged in piling, civil structural & architectural engineering & construction of various industrial, building and

infrastructural projects in India. According to petitioner, they have acquired substantial goodwill and reputation in the field of infrastructure for their efforts and quality in the execution of their projects.

3. Respondent is a state-owned Public-Sector Unit (PSU) engaged in design, engineering, construction, testing, commissioning and servicing of a wide range of products and services.

4. According to petitioners, on 09.05.2018 respondent invited bids for civil work for Visakh Refinery Modernization Project at HPCL, Vishakapatnam, Andhra Pradesh, followed by four Tender Change Notices dated 23.05.2018, 29.05.2018, 30.05.2018 and 02.06.2018 to which an offer was made by the petitioner vide its letter dated 30.05.2018. The price bid was opened on 19.06.2018 and petitioner was invited for negotiation. On 20.06.2018, negotiations were conducted and a final price offer was made by the petitioner, which was accepted by the respondent by Letter of Intent dated 23.06.2018. The said letter of intent was accepted by petitioner on 28.06.2018.

5. Thereafter, the respondent issued a work order bearing No. BHEL/NR/SCT/VRM/PILING/CI897(1104) dated 18.08.2018 in favour of the petitioner for a contract price of Rs.26,58,33,800/-. The petitioner

commenced mobilizing its equipment, funds and resources to the work site, however, from the very inception of the project respondent failed to comply with the terms and conditions of the agreement to facilitate timely execution of the project. According to petitioner, it suffered tremendous financial constraints to complete the project and delay in completing the project resulted in formal increase in the contract value from Rs.26,58,33,800/- to Rs.37,07,96,762/- by way of an amendment to the Work Order on 05.03.2020.

6. Further urged on behalf of petitioner that petitioner vide letter dated 20.12.2020 invoked Clause 2.21.1 of the General Conditions of the Contract (GCC) to refer the dispute to the Designated Engineer for settlement of disputes, which was acceded to by the respondent and the dispute was heard by the Designated Engineer. However, the Designated Engineer failed to pass the reasoned order within a period of reasonable time and, therefore, petitioner vide letter dated 11.05.2021 invoked the Arbitration Clause under GCC.

7. Next submitted on behalf of petitioner that after invocation of arbitration clause, the Designated Engineer rendered decision on 31.05.2021 but has, however, dismissed petitioner's claim without appreciating the

contentions of the petitioner. It is submitted that the arbitration clause mentioned in the 2.21.2 of the GCC, stipulates that in the event of contractor being dissatisfied with the decision of the Designated Engineer or the parties fail to settle the disputes by means of amicable settlement, the dispute shall be referred for arbitration. Hence, the present petition has been filed.

8. Notice issued.

9. Ms. Mayuri Raghuvanshi, Advocate, accepts notice on behalf of respondent.

10. Both sides have been heard and record of this case has been perused.

11. Petitioner has invoked arbitration vide notice dated 11.05.2021. Though the present petition has been opposed by counsel for respondent, however, existence of arbitration agreement between the parties and invocation of arbitration are not disputed.

12. In view of the above, the present petition is allowed and **Justice Deepak Mishra, former Chief Justice of India (Mobile: 9560333111)** is appointed the Sole Arbitrator to adjudicate the dispute between the parties.

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

14. The learned Arbitrator shall ensure compliance of Section 12 of

Arbitration and Conciliation Act, 1996 before commencing the arbitration.

15. A copy of this order be sent to learned Arbitrator for information.

16. With aforesaid directions, the present petition is accordingly disposed of.

(SURESH KUMAR KAIT)
JUDGE

JULY 29, 2021
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