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

+ **ARB.P. 760/2021**

SARENS HEAVY LIFT INDIA PRIVATE LIMITED

..... Petitioner

Through: Mr. Dibya Nishant, Mr. Ryan
Singh and Ms. Bitisha Singh, Advs.

versus

GAMMON-CONSTRUTORA CIDADE-TENSACCIAI JV

..... Respondent

Through: Mr. Aditya Dev Triguna, Adv.

+ **O.M.P.(I) (COMM.) 279/2021**

SARENS HEAVY LIFT INDIA PRIVATE LIMITED

..... Petitioner

Through: Mr. Dibya Nishant, Mr. Ryan
Singh and Ms. Bitisha Singh, Advs.

versus

GAMMON-CONSTRUTORA CIDADE-TENSACCIAI JV

..... Respondent

Through: Mr. Aditya Dev Triguna, Adv.

CORAM:

HON'BLE MR. JUSTICE C. HARI SHANKAR

ORDER (O R A L)

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27.10.2021

ARB.P. 760/2021 and O.M.P.(I) (COMM.) 279/2021

1. Learned Counsel for the respondent does not oppose reference of the disputes between the parties to arbitration and suggests that OMP (I) (Comm) 279/2021 could be referred to the learned arbitrator

to be decided as an application under Section 17 of the Arbitration and Conciliation Act, 1996.

2. The prayer in OMP (I) (Comm) 279/2021 reads thus:

“In view of the facts and circumstances explained above, the Petitioner herein most humbly and respectfully prays that this Hon'ble Court may [be] pleased to:

- a. Direct the Respondent to furnish adequate security in the form of Bank Guarantee issued by a Nationalized Bank in India or such other security as this Hon'ble Court deems fit that cover the entire amount of Rs. 2,23,62,907/-; and/or
- b. Alternatively, direct the Respondent to deposit with this Hon'ble Court an amount of Rs. Rs. 2,23,62,907/- by way of interest-bearing Fixed Deposit until conclusion of arbitration proceedings; and/or
- c. Pass any other or further Order (s) as this Hon'ble Court deem fit in the facts and circumstances of the case.”

3. As the prayers of the petitioner do not seek any injunction, but merely seek securing of the amount in dispute in the arbitral proceedings, I am of the opinion that the suggestion, of learned Counsel for the respondent, for the prayer being referred for decision to the learned Arbitrator under Section 17 of the 1996 Act, deserves to be accepted.

4. In view thereof, both these petitions are disposed of in the following terms:

(i) Mr.Avadh Bihari Kaushik, Advocate [Cell No.9811455431 and E-mail ID : avadhkaushik@gmail.com] is appointed as the Arbitrator to arbitrate on the disputes between the parties.

(ii) The Arbitrator would be entitled to charge fees in accordance with the Fourth Schedule to the 1996 Act or as otherwise fixed by him in consultation with learned Counsel for the parties.

(iii) The learned Arbitrator is requested to file the requisite disclosure under Section 12(2) of the 1996 Act within a week of entering on the reference.

(iv) OMP (I) (Comm) 279/2021 stands referred for adjudication by the learned Arbitrator, who shall treat OMP (I) (Comm) 279/2021 as an application under Section 17 of the 1996 Act, without the petitioner being required to file a fresh application before the learned Arbitrator.

5. Both the petitions stand disposed of in the aforesaid terms.

C. HARI SHANKAR, J

OCTOBER 27, 2021/kr