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

+ **ARB.P. 422/2020**

PATIL RAIL INFRASTRUCTURE PVT LTD Petitioner
Through Mr. Ishan Sanghi, Adv.

versus

IRCON INTERNATIONAL LIMITED Respondent
Through

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

ORDER(ORAL)
% 13.04.2021
(video-conferencing)

C. HARI SHANKAR. J.

ARB.P. 422/2020

1. By this petition under Section 11(6) of the Arbitration and Conciliation Act, 1996 ("1996 Act"), the petitioner seeks appointment of an arbitrator to arbitrate on the dispute between the petitioner and the respondent.

2. The dispute arises out of a Supply Contract Agreement dated 14th May, 2012, which also contains General Conditions of Contract (GCC) and Special Conditions of Contract (SCC). Clause 36 of the General Conditions of Contract (GCC) provides for settlement of the disputes by arbitration, which read thus:

“36.0 SETTLEMENT OF DISPUTES

36.1 All disputes or differences of any kind whatsoever that may arise between the Employer/Engineer and the supplier in connection with or arising out of the contract or subject matter thereof or the execution of works, whether during the progress of works or after their completion, whether before or after determination of contract shall be settled as under:-

36.2 Mutual Settlement

All such disputes or differences shall in the first place be referred by the supplier to the Employer in writing for resolving the same through mutual discussions, negotiations, deliberation etc. associating representatives from both the sides and concerted efforts shall be made for reaching amicable settlement of disputes or differences.

36.3 Conciliation/Arbitration

36.3.1 It is a term of this Contract that Conciliation/Arbitration of disputes shall not be commenced unless an attempt has first been made by the parties to settle such disputes through mutual settlement.

36.3.2 If the supplier is not satisfied with the settlement by the Employer on any matter in question, disputes or differences, the supplier may refer to the Managing Director of the Employer in writing to settle such disputes or differences through Conciliation or Arbitration provided that the demand for Conciliation or arbitration shall specify the matters, which are in question or subject of the disputes or differences as also the amount of claim, item wise. Only such dispute(s) or difference(s) in respect of which the demand has been made, together with counter claims of the employer shall be referred to Conciliator or Arbitrator as the case may be and other matters shall not be included in the reference.

36.3.3 Managing Director of the Employer may himself act as sole Conciliator / Sole Arbitrator or may at his option appoint another person as Sole Conciliator or Sole Arbitrator, as the case may be. In

case, Managing Director of the Employer decides to appoint a Sole Conciliator/Sale Arbitrator, then a panel of at least three names will be sent to the supplier. Such persons may be working/retired employee of the Employer who had not been connected with the work. The supplier shall suggest minimum two names out of his panel for appointment of Sole Conciliator/Sole Arbitrator. Managing Director of the Employer will appoint Sale Conciliator/Sale Arbitrator out of the names agreed by the supplier.

36.3.4 In case the supplier opts for settlement of disputes through Conciliation at first stage and if the efforts to resolve all or any of the disputes through Conciliation fails. the supplier may refer to the Managing Director of the Employer for settlement of such disputes or differences through Arbitration. The appointment of sale arbitrator shall be done by the Managing Director of the Employer as per the procedure described above. No disputes or differences shall be referred to Arbitration after expiry of 60 days from the date of notification of failure of Conciliation.

36.3.5 The Conciliation and/or Arbitration proceedings shall be governed by the provisions of the Indian Arbitration and Conciliation Act 1996 or any statutory modification or re-enactment thereof and the rules made thereunder and for the time being in force shall apply to the Conciliation and arbitration proceedings under this clause.

36.3.6 The language of proceedings, documents or communications shall be in English and the award shall be made in English in writing.

36.3.7 The conciliation/arbitration proceedings shall be held at a place decided by Conciliator/Arbitrator.

36.3.8 The fees and other charges of the Conciliator/Arbitrator shall be as per the scales fixed by the Employer from time to time and shall be shared equally between the Employer and the supplier.

36.3.9 The minimum qualifications of Conciliator/

Arbitrator shall be graduate in Engineering. He may be working or retire officer with a minimum of 20 years' service in Group A of any Engineering Service of Central Govt. or and equivalent service in a Central PSU. He should be clear from vigilance angle and should be a person with reputation of high technical ability and integrity. Also, he should not have been associated with the contract to which the dispute pertains.”

2. The disputes had earlier arisen between the petitioner and the respondent, which were referred to Mr. Kanwarjit Singh, Former Member, Engineering Railway Board, under the aforesaid extracted Clause 36 of the GCC, for arbitration.

3. The learned arbitrator passed his award on 6th August, 2015. This award was challenged by the respondent before this Court under Section 34 of the 1996 Act, *vide* OMP(COMM) 251/2016, which was dismissed by the learned Single Judge of this Court *vide* order dated 12th March, 2018. That order was carried, further, by the respondent, in an appeal under Section 37 of the 1996 Act, to the Division Bench, which dismissed the appeal on 1st June, 2018. Special Leave Petition, preferred thereagainst, was also dismissed by the Supreme Court on 12th October, 2018.

4. As, according to the petitioner, certain amounts remained outstanding from the respondent, and the respondent was also illegally not releasing the bank guarantee furnished by the petitioner, the petitioner addressed a notice to the respondent on 1st May, 2020. No response being forthcoming from the respondent, the petitioner invoked Clause 36.3 of the GCC, and sought reference of the disputes ARB.P. 422/2020

to arbitration, *vide* its communication dated 26th June, 2020. It was suggested that Mr. Kanwarjit Singh could arbitrate on the dispute as well, as he was well conversant with the said facts.

5. Consequent thereupon, a meeting was held between the petitioner and the respondent on 24th July, 2020, the minutes of which have been placed on record. A perusal thereof reveals that, in case the remaining issues were not resolved within 45 days, the disputes would be referred to arbitration.

6. It appears that, despite the expiry of the aforesaid period of 45 days, the disputes remain unresolved.

7. It is in these circumstances, the petitioner has moved this Court seeking reference of the dispute to arbitration.

8. As noted towards the commencement of the order, despite service of notice, the respondent has chosen to remain unrepresented. No reply to this petition has been filed, either.

9. In the above position, I appoint Ms Poonam Chowdhury, Additional District Judge (retired) (Ph: 9910384755) as the arbitrator to arbitrate on the disputes between the parties. The learned arbitrator would be entitled to charge fees in accordance with the Fourth Schedule to 1996 Act.

10. The learned arbitrator may file the requisite disclosure under

Section 12(2) of the 1996 Act within a week of entering on the reference.

11. The petition stands disposed of in the aforesaid terms, with no order as to costs.

C. HARI SHANKAR, J.

APRIL 13, 2021
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HIGH COURT OF DELHI



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