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

% ***Date of decision: 29.10.2021***

\+ ARB.P. 949/2021

OFB TECH PVT. LTD. ..... Petitioner

Through Mr. Varun Tyagi, Adv.

versus

KLSR INFRATECH LTD. ..... Respondent

Through Mr. Mahfooz Nazki, Mr. Amitabh Sinha and Mr. Gowtham Polanki, Advs.

CORAM:
HON'BLE MR. JUSTICE SURESH KUMAR KAIT

J U D G M E N T ***(oral)***

1. The present petition has been filed by petitioner seeking appointment of a Sole Arbitrator under the provisions of Section 11(6) of the Arbitration and Conciliation Act, 1996.

2. Petitioner is a Private Limited Company incorporated under the erstwhile provisions of the Companies Act. Petitioner is inter-alia engaged in the Business-to-Business (B2B) trading and supply of raw materials to Small and Medium Enterprises and other Corporates. Oxyzo Financial Services Pvt. Ltd is a Non-Banking Finance Company ("Oxyzo"), which is

a wholly owned subsidiary of the petitioner and is, therefore, a sister concern of petitioner.

3. On the other hand, respondent is also a company incorporated under the erstwhile provisions of the Companies Act. Respondent is inter-alia engaged in the business of Infrastructure.

4. According to petitioner, a Master Facilities Agreement dated 25.06.2019 was executed between Oxyzo and respondent for providing financing facility to respondent of Rs.10 Crores, wherein petitioner signed as a confirming party. Respondent also entered into a Memorandum of Understanding dated 25.06.2019 with petitioner for availing Working Capital Facility of Rs.10 Crores in order to purchase raw material. As per the terms of the aforesaid Agreement dated 25.06.2019, respondent got issued Unconditional Bank Guarantees in favour of petitioner for Rs.12 Crores on 27.06.2019 and Rs.8 Crores on 28.10.2020 which were extended from time to time with last date of expiry being 24.12.2020 and 26.12.2020, respectively.

5. Respondent defaulted in its payment schedule in terms of the Memorandum of Understanding dated 25.06.2019 executed with the petitioner as well as the payment schedule agreed with Oxyzo, therefore, the

petitioner issued an email, setting out the default on the part of respondent. Due amount was categorically laid down in the said email, which for the petitioner and Oxyzo amounted to Rs.22,62,60,592/-.

6. Respondent replied back alleging that dues of petitioner have not been cleared as payments have not been received by respondent from the Government due to Covid. However, respondent did not dispute the amount and its liability as detailed by the petitioner in its email. Despite various reminders and follow-ups, the respondent did not respond positively, hence, the petitioner decided to invoke the Bank Guarantees. Thereafter, certain disputes arose between the parties regarding dues amounting to Rs.3,31,39,697/- with interest.

7. Subsequently, petitioner, in terms of Clause 14 of the Memorandum of Understanding dated 25.06.2019 invoked arbitration in accordance to which a Sole Arbitrator was to be mutually appointed by the parties but respondent rejected the name of the Arbitrator suggested by petitioner. Therefore, the present petition has filed the present petition.

8. Notice issued.

9. Learned counsel for respondent accepts notice and submits that he has no objection if the present petition is allowed and a Sole Arbitrator may be

appointed to adjudicate the dispute between the parties subject to all issues to remain open before the learned Arbitrator be appointed.

10. Accordingly, **Justice (Retd.) R.V.Eswar (Mobile 9560899997)** is appointed the sole Arbitrator to adjudicate the dispute between the parties.

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

12. The learned Arbitrator shall ensure compliance of Section 12 of Arbitration and Conciliation Act, 1996 before commencing the arbitration.

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

(SURESH KUMAR KAIT)
JUDGE

OCOTBER 29, 2021
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