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

% Judgment delivered on: 04th May, 2022

+ **ARB.P. 424/2022**

SUDHIR POWER PROJECTS LTD Petitioner

versus

SIMPLEX INFRASTRUCTURES LTD. Respondent

Advocates who appeared in this case:

For the Petitioner: Mr. Piyush Kaushik, Advocate

For the Respondent: Mr. Parag Chaturvedi and Mr. Sanket Khandelwal,
Advocates

CORAM:-

HON'BLE MR. JUSTICE SANJEEV SACHDEVA

JUDGMENT

SANJEEV SACHDEVA, J

1. Petitioner seeks reference of disputes that have arisen between the parties pursuant to work order dated 19.10.2015.
2. Learned counsel for the respondent submits that the petitioner has not followed the pre arbitration steps as per the arbitration clause.
3. He submits that the disputes were to be resolved through direct and mutual discussion at site level and thereafter the matters were to

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be referred to the regional heads of both the companies. He submits that petitioner has not approached the respondent for amicable/mutual discussion but has only made demands for payment of his amount.

4. Learned counsel for the petitioner, per contra, contends that several e-mails and notices were issued to the respondent requiring the respondent to pay the due amount, however, no settlement has taken place and even the emails and notices have not been even replied.

5. I am unable to accept the contentions of the learned counsel for the respondent for the reasons that there is no dispute that parties have agreed to resolve their disputes through arbitration.

6. The arbitration clause reads as under:-

“Resolution of Disputes

All disputes and/ or differences arising out of this work order or differences of opinions, interpretation of clause, technical Specifications etc. shall be resolved through direct and mutual discussions at site level.

In case, parties fail to reach amicable settlement, the above stated all disputes shall be referred to arbitration for adjudication. Each party shall nominate one Arbitrator and the Presiding Arbitrator shall be appointed by the two arbitrators so appointed by the parties. The Arbitration shall be governed as per Arbitration & Conciliation Act 1996 as amended from time to time. The seat and Venue of the Arbitration shall be New Delhi and subject the

Arbitration Court at Delhi shall have exclusive Jurisdiction. The Language of Arbitration shall be English. The proceeding of the Arbitration unless extended shall be completed within one year.

You shall not stop the work during pendency of Arbitration or other dispute before any other forum.”

7. The arbitration clause provides that all disputes and differences are to be resolved through direct and mutual discussion at site level and thereafter referred to arbitration.

8. The pre arbitration steps stipulated by the agreement are merely facilitative steps for amicable resolution of the disputes. Petitioner has placed on record several correspondences in the shape of e-mails and notices sent to the respondent making demand of the alleged due amount and raising grievance with regard to non-payment of the same.

9. As per the petitioner none of the e-mails or replies have been responded to by the respondent. Even the notice invoking arbitration has not been responded to.

10. Since the respondent has not even responded to any of the demands made by the petitioner, it would not be permissible for the respondent to contend that petitioner has not followed the pre arbitration steps for resolution of the disputes.

11. This is not a case where parties had agreed to refer the disputes to a third party or an expert for conciliation or resolution prior to arbitration. The pre arbitration steps envisaged in the agreement are merely steps for amicable resolution inter parties. Petitioner has sent several e-mails and reminders to the respondent and respondent has failed to even respond to the same. Petitioner cannot be left high and dry by the respondent failing to even respond to the demands made by the petitioner.

12. In view of the above, I am satisfied that petitioner has made all efforts to initiate pre arbitration steps. However, the resolution has not been possible. Accordingly, it is a fit case where an Arbitral Tribunal should be constituted to adjudicate the claims and counter-claims, if any, of the parties.

13. Accordingly, the petition is allowed.

14. Learned counsels for the parties submit that even though the clause provides for disputes to be referred to three member Tribunal, keeping in view the claim of the petitioner, they are agreeable to the reference of their disputes to a Sole Arbitral Tribunal.

15. With the consent of parties, Mr. Sanjeev Kumar Chaswal, Advocate (Former member of the Intellectual Property Appellate Board) (Mobile No. +91 9811083930; email: chaswals@gmail.com;

Chamber No. 177, Lawyers Chambers Block II, Delhi High Court, New Delhi) is appointed as the Arbitral Tribunal to adjudicate the claims and counter-claims, if any, of the parties.

16. The fees of the learned Arbitrator shall be as per the Fourth Schedule of the Arbitration and Conciliation Act, 1996.

17. The Arbitrator shall furnish the requisite disclosure under section 12 of the Arbitration and Conciliation Act, 1996 within two weeks of entering reference.

18. The petition is disposed of in the above terms.

SANJEEV SACHDEVA, J

MAY 4, 2022‘rs’

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