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

% ***Date of decision:18.01.2022***

+ ARB.P. 766/2021

CXL TITON ELECTRONICS PVT LTD. Petitioner
Through: Mr. Sanjay Goswami, Advocate

Versus

THE JOINT SECRETARY MINISTRY OF FISHERIES, ANIMAL
HUSBANDRY AND DAIRYING & ANR. Respondents
Through: Mr. Vinod Diwakar, CGSC with
Mr. Vishal Kumar Singh, Advocate

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 the petitioner under the provisions of Section 11(5) and 11(6) of the Arbitration and Conciliation Act, 1996 seeking appointment of Arbitrator to adjudicate the disputed with respondent.

2. Petitioner is a Private Limited company dealing in RO Systems, Water Purifiers, Effluent Treatment Plants, Sewerage Treatment Plants and Water Softening Plants, who was awarded work under tender No.7-15/2013 -14/PUR/DES/73 dated 18.09.2013 for installation, commissioning, operation and ultimately transfer of Reverse Osmosis Plants etc. capable of

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supplying minimum 7-12 lacs liters of treated RO water per day, by the respondents. Under the said work, petitioner was obliged to fulfil requirements of respondent No.2- DMS by installing two machines which could provide approximately 12 lacs litres RO water per day, for which Respondent No.2 (DMS) had agreed to provide petitioner two Borewell for 24 hours each. For accomplishing the work, petitioner had to provide shed, RO machines, two tube wells and pipe lines etc. at its own costs and had to invest Rs.3.5 Crores for installation of machinery, furniture and fixture to meet out the requirements of respondent No.2. The work tender was for a period of five years to recover its investments and operational costs at the optimum supply of minimum 7 lacs litres of treated RO water on daily basis in the said operation period of five years.

3. According to petitioner, it was agreed that the said agreement was for 5 years @ Rs.99/- per kiloliter of treated water being paid by the respondent No.2 DMS to the petitioner for the first year and thereafter to be increased at the rate of 5% for every subsequent year. However, for reasons know to respondent No.2, it could not get the permission from the Delhi Jal Board for extraction of ground water from the borewell made available to the Petitioner to an extent as was stipulated to be supplied for generation of 12



Lac liters of treated RO water. On 24.04.2014, respondent No.2- DMS issued an amendment letter to revise the minimum and maximum uptake of the treated water from the petitioner, whereunder petitioner was required to supply minimum 4.375 lacs litres RO water per day and up to a maximum of 7 lacs litres of RO water per day to the Respondent No.2- DMS a revised period of 8 years.

4. During the course of hearing, learned counsel for petitioner has submitted that the petitioner was already suffering loss due to non-availability of the untreated water and the objections of the Delhi Jal Board to Respondent No.2-DMS, however, it accepted the amended work order as it has already invested on operations and machinery. Further submitted that despite this, respondent No.2 vide its letter dated 10.10.2019 pre-terminated illegally the said agreement without assigning any reason and that the petitioner had incurred expenses of more than Rs.11 Crores on the said project. According to petitioner, against the pre-mature termination of the contract, petitioner made several representations and held meeting with the senior officers of DMS, but to no avail.

5. Learned counsel for petitioner has submitted despite a series of writing letters when matter could not be resolved, petitioner vide Notice



dated 12.03.2021 under Section 80 of the CPC asked the respondents to pay compensation of Rs.3,14,18,580 /- along with interest i.e. the amounts due towards the monthly invoices, but neither the said notice was replied nor payment was made. So, petitioner was constraint to send Notice dated 07.06.2021 to the respondent invoking arbitration and also proposed names of panel of five arbitrators, which was also not replied to.

6. According to learned counsel for petitioner, as per Clause-18 of second Schedule of the tender, which stipulated *“that in case of any disputes concerning the agreement, the Secretary, Ministry of Law Department of the Legal Affairs Govt. of India shall nominate the Sole Arbitrator and the Petitioner shall have no right to object to the same”*, however, since by virtue of decision of Hon’ble Supreme Court in *Perkins Eastman Architects DPC & Anr. vs. HSCC (India) Ltd.* 2019 SCC Online SC 1517, the aforesaid clause has become null and void, therefore, the present petition has been filed seeking appointment of arbitrator.

7. At this stage, learned CGSC appearing on behalf of respondent has submitted that the averments made in the present petition are disputed however, invocation of arbitration by petitioner by virtue of notice dated 07.06.2021 and existence of arbitration Clause-18 in the second schedule of



tender, is not disputed. Learned CGSC submitted that the disputes are arbitrable and this Court may appoint an Arbitrator for adjudication of disputes.

8. Accordingly, **Mr.D.C. Anand, DHJS (Retd.) (Mobile: 9910384644)** is appointed the sole Arbitrator to adjudicate the dispute between the parties.

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

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

11. The present petition and pending application, if any, are accordingly disposed of.

(SURESH KUMAR KAIT)
JUDGE

JANUARY 18, 2022/r