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

+ **ARB.P. 859/2022**

**SANGHVI MOVERS LIMITED**

..... Petitioner

Through: Mr. Sandeep P. Agarwal,  
Senior Advocate with Ms.  
Niyati Kohli, Mr. Pratham Vir  
Agarwal and Ms. Tanya,  
Advocates.(M): 7838794194  
Email: prathamvir@gmail.com

versus

**VIVID SOLAIRE ENERGY PRIVATE  
LIMITED**

..... Respondent

Through: Ms. Aanchal, Advocate. (M):  
9915495854 Email:  
admin@ablaw.in

**CORAM:**

**HON'BLE MS. JUSTICE MINI PUSHKARNA**

**J U D G M E N T**

**15.12.2022**

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**MINI PUSHKARNA, J.**

1. The present petition has been filed by the petitioner under Section 11 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as 'The Act') seeking appointment of the sole arbitrator in terms of Clause 10 of the contract dated 18.01.2021 between the parties.

2. The petitioner is engaged in the business of providing cranes of various types and capacity on hire basis. Respondent is engaged in the business of constructing, developing, operating and maintaining wind power projects in India.

3. Parties entered into business negotiations leading to Respondent issuing a Purchase Order dated 28.12.2020. Thereafter, on 18.01.2021, the petitioner and respondent executed a contract, entailing the following as the agreed terms:

*“(i) The Petitioner shall provide the Equipment (with the Operators) to the Respondent, on hiring basis, for installation of Vestas make and model V 120 with 120 m hub height and 85MT nacelle lifting and other related components at the Site.*

*(ii) The hiring of Equipment shall be initially for a period of 6 months, which can be further extended by the Company with a prior notice of minimum 15 days to the Petitioner (Hire Period). The Hire Period shall start on 25 January 2021 and continue till End Date.*

*(iii) The Contract Price for hiring of Equipment includes 30/31 working days in a month and 24 hours per day.*

*(iv) The Respondent shall give right of way, right of access to and possession of those parts of Site necessary to enable the assembly and working of Equipment and for carrying out the services to the Petitioner.*

*(v) The Respondent shall pay to the Petitioner a consideration for performance of Petitioner's obligations under the Contract as per the price breakup provided in Schedule B of the Contract.*

*(vi) The payment of the rental/hire charges shall be made within a period more specifically mentioned in the Word Order, LOI's, Extension Order and Extension Emails of the Respondent.*

*(vii) Any dispute, if arises between the parties shall be settled in accordance with the Arbitration and Conciliation Act, 1996 by a Sole Arbitrator.”*

4. Pursuant to the aforesaid contract dated 18.01.2021, the

respondent issued various purchase orders to the petitioner, viz. Purchase Orders dated 01.03.2021, 08.03.2021, 17.06.2021, 31.03.2022.

5. It is the case of the petitioner that as per Clause 3.1 of the Contract, 'the right to way' to the project site for installation and demobilisation of the cranes was to be provided by the respondent. On 26.10.2021, the respondent sent an email to the petitioner informing that the crane packages provided by the petitioner could be demobilised. Accordingly, the petitioner initiated the process of demobilisation, however, the same could not be done due to protest from local vendors of the respondent who did not allow the petitioner to get access and move its crane and equipment from the site. Thus, it is the submission on behalf of the petitioner that it did not get 'right of way' to the project site for the reasons attributable to the respondent. Thus, the petitioner had to approach the concerned Police station and the Madras High Court for seeking access and 'right of way' for its cranes and equipment. After obtaining directions and police protection from the Madras High Court, the petitioner was provided 'right to way' on 31.03.2021, under the protection of local police officials to demobilise its cranes from the sites of the respondent.

6. It is submitted on behalf of the petitioner that despite numerous communications, the hire charges for the period from 15.11.2021 till 31.03.2022 were not paid by the respondent. Accordingly, the petitioner sent a notice invoking arbitration vide letter dated 06.06.2022 to the respondent for settlement of disputes in terms of Clause 10 of the contract agreement.

7. The petitioner received a reply dated 08.07.2022 from the respondent refusing to consent to arbitration on the ground that the petitioner did not send the notice of dispute to the respondent. It is the case of the petitioner that in raising such an objection, the respondent ignored all the prior communications dated 30.12.2021, 10.02.2022, 04.04.2022, 20.04.2022 and 09.05.2022 written by the petitioner to the respondent thereby notifying the dispute, i.e., the claim of hire charges as payable to the petitioner by the respondent. Since the respondent failed to agree to the process of resolution of disputes through arbitration as provided under the contract, the present petition under Section 11 (6) of the Act has come to be filed on behalf of the petitioner.

8. The present petition has been opposed vehemently by the respondent. It is contended on behalf of the respondent that the present petition is not maintainable as parties have not submitted themselves to the process of arbitration in relation to the disputes raised by the petitioner. It is submitted that the relationship between the parties arises out of and is governed by the purchase orders issued and executed between the parties. There exists no arbitration clause in the said purchase orders. As per the purchase orders, the parties had decided to submit themselves to the jurisdiction of the courts at Delhi. As such, any appointment of an arbitrator in the present proceedings would be against the intention of the parties and the spirit of the documents executed between them.

9. It is submitted that purchase order dated 28.12.2020 clearly recorded the dispute resolution mechanism in Clause 11, to which the

parties agreed. Clause 11 of the purchase order dated 28.12.2020 as referred by the respondent is as follows:

*“All the disputes and differences, if any, which may arise relating to this Purchase Order shall be settled according to Indian laws and courts in New Delhi shall have exclusive jurisdiction.”*

10. It is the case of the respondents that the parties executed a separate contract for hiring of the crane package on 18.01.2021. However, the term of the contract was set out for an initial period of 6 months, with an end date on 25.07.2021. The respondent relied upon the following clause of the contract dated 18.01.2021.

*“The hiring of Equipment shall be initially for a period of 6 months, which can be further extended by the Company with a prior notice of minimum 15 days to the Contractor (Hire Period). The Hire Period shall start on 25 January 2021 (Start Date) and continue until the End Date.”*

11. Thus, it is contended on behalf of the respondent that even during the subsistence of the contract dated 18.01.2021, the parties decided to continue performing their obligations on the basis of the purchase order dated 28.12.2020. It is the case on behalf of the respondent that the payment terms as set out in the contract did not contain any reference to any purchase orders or did not contemplate any purchase orders being issued by the parties.

12. It is further submitted on behalf of the respondent that amended purchase orders dated 08.03.2021, 17.06.2021 and 31.03.2022 were issued by the respondent and accepted by the petitioner. Even the amended purchase orders did not make any mention of the contract

whatsoever.

13. It is the case of the respondent that in furtherance of their intention to be governed by only purchase orders, the respondent issued purchase order dated 01.03.2021 for supplying another set of crane package to the respondent on hire basis. Clause 11 of the said purchase order dated 01.03.2021 also stipulated regarding the courts in New Delhi having exclusive jurisdiction. The said clause as referred by the respondent is reproduced as below:

*“All the disputes and differences, if any, which may arise relating to this Purchase Order shall be settled according to Indian laws and courts in New Delhi shall have exclusive jurisdiction.”*

14. The purchase order dated 01.03.2021 was amended subsequently on 08.03.2021, 17.06.2021, 31.03.2022. It is submitted that no mention of the contract was made even at this stage by the parties in the purchase order dated 01.03.2021 or any of its amendments. Thus, ld. Counsel appearing for the respondent submitted that parties never intended to be governed by the contract. In any event, post completion of the end date in the contract, any further hire was covered by the purchase orders. The contract contained a fixed term of 6 months for which it was to operate in relation to transaction between the parties. It is an admitted position that the contract was never extended by the parties at any point of time and came to a conclusion on 25.07.2021.

15. Thus, it is the case of respondent that the disputes as raised by the petitioner arise solely out of the purchase orders and cannot be said to arise from the contract, which in any event had come to an end

on 25.07.2021. After the said date of 25.07.2021, any relationship between the parties would be governed by the purchase orders. It is further the case of the respondent that the arbitration clause cannot be said to be incorporated in the dealings between the parties. The parties always intended their relationship to be governed by the purchase orders. The disputes, if any, were not intended to be submitted to arbitration, since the purchase orders themselves contained a separate and distinct dispute resolution clause.

16. In its support, respondent has relied upon the following judgments:

- I. (2009) 7 SCC 696, *M.R. Engineers and Contractors Pvt. Ltd. Vs. Som Dutt Builders Ltd.*
- II. MANU/SC/1352/2017, *Duro Felguera S.A. Vs. Gangavaram Port Ltd.*
- III. AIR 1965 SC 1288, *Central Bank of India Ltd. Amritsar Vs. Hartford Fire Insurance Co. Ltd.*
- IV. 2022 SCC OnLine Del 896, *Sudhir Power Projects Ltd. Vs. Unipower Projects Pvt. Ltd.*

17. In rejoinder, the petitioner has refuted all the contentions as raised on behalf of the respondent and submits that the disputes essentially arise out of the contract between the parties. The petitioner has relied upon the following judgments:

- i. *Balasore Alloys Limited Vs. Medima LLC*, (2020) 9 SCC 136
- ii. *Gannon Dunkerley and Co. Ltd. Vs. SREI Equipment Finance Ltd.*, 2021 SCC OnLine Cal 566

18. In order to decide the controversy between the parties, it will be useful to refer to the contract between the parties and the purchase orders issued by respondent in favour of the petitioner. The contract agreement dated 18.01.2021 details the scope of work in Clause 2.1 as follows:

***“2.1. Scope of Work***

*The Contractor's scope of work under this Contract shall mean and include obligations relating to the following:*

- (a) The Contractor shall provide the Equipment (with the Operators) to the Company, on hiring basis, for installation of Vestas make and model V 120 with 120 m hub height and 85MT nacelle lifting and other related components at the Site.*
  - (b) The hiring of Equipment shall be initially for a period of 6 months, which can be further extended by the Company with a prior notice of minimum 15 days to the Contractor (**Hire Period**). The Hire Period shall start on 25th January 2021 (**Start Date**) and continue until the End Date.*
  - (c) The Contract Price for hiring of Equipment includes 30/31 working days in a month and 24 hours per day. It is clarified that the log sheet shall be maintained for 27 days in a month and up to 4 days shall be kept for preventive maintenance depending on Site conditions and requirements. The Contractor shall not be paid for any overtime.*
- collectively. ("**Services**") and shall also include all such activities and obligations as may be considered ancillary to the aforesaid services.”*

19. Clause 1.1 dealing with the definitions defines equipment as follows:

*“Equipment means the 600MT main crane package including loading - unloading crane package type, one set each, as detailed in Schedule A.”*

20. The definition of equipment refers to the crane package as detailed in Schedule A within the scope of meaning of the equipment. Schedule A of the contract is reproduced as below:

“SCHEDULE A  
EQUIPMENT

**A. CRANE PACKAGE DETAILS**

Package A: Main Crane for WTG Erection

| S.No. | Description                                             | Qty |
|-------|---------------------------------------------------------|-----|
| 1     | 600/650T – equivalent, Suitable to V 120, 2.0 MW HH 120 | 1   |
| 2     | 220T MC – Tyre mounted telescopic crane                 | 1   |
| 3     | 80T MC – Tyre mounted telescopic crane                  | 2   |
| 4     | Low Bed Trailer – VOLVO                                 | 2   |
| 5     | High Bed Trailers – Suitable                            | 6   |

Package B: WTG Loading/Unloading Yard Crane Package.

| S.No. | Description                             | Qty |
|-------|-----------------------------------------|-----|
| 1     | 180T MC – Tyre Mounted Telescopic Crane | 1   |
| 2     | 100T MC – Tyre Mounted Telescopic Crane | 2   |
| 3     | Palfinger-Suitable                      | 1   |
| 4     | Telehandler – Suitable                  | 1   |
| 5     | Hydra Crane – 14 MT                     | 2   |
| 6     | High Bed Trailers – Suitable            | 1   |

”

21. The contract further stipulates in Clause 3.1 with respect to

liability of respondent company to give right of way and right of access to the site for carrying out the services. Clause 3.1 is reproduced as below:

*“3.1. The Company shall give the Contractor right of way, right of access to and possession of those parts of Site necessary to enable the assembly and working of the Equipment and for carrying out the Services. The Contractor acknowledges and agrees that such right and possession may not be exclusive to the Contractor and will be subject to the terms of any relevant Approvals.”*

22. Scrutiny of the purchase orders dated 28.12.2020 and 01.03.2021 clearly show that the said purchase orders refer to hiring of crane packages, in Package A and Package B, as described in the contract dated 18.01.2021 between the parties. Thus, while the contract dated 18.01.2021 prescribes the general agreement between the parties for hiring of crane packages by the respondent, the purchase orders give specific description of the quantities which are required for specified periods as specified in the purchase orders. Thus, examination of the contract and the purchase orders clearly exhibits that they relate to the same purpose and are between the same parties. Therefore, the contract dated 18.01.2021 and the purchase orders are intrinsically intertwined with each other and are connected fundamentally to the transaction between the parties for hiring of crane packages by the respondent from the petitioner company.

23. Perusal of the disputes raised by the petitioner manifests that the claim for hire charges by the petitioner is due to non-availability of clear ‘right of way’ to the project site, which was an obligation to

be performed by the respondent as per Clause 3.1 of the Contract dated 18.01.2021. Therefore, the disputes raised by the petitioner are directly relatable to the contract dated 18.01.2021 between the parties, which contains the arbitration clause.

24. Purchase orders issued by the respondent cannot be said to be independent of the contract dated 18.01.2021. The purchase orders have been issued by the respondent on the basis of and in pursuance of the contract dated 18.01.2021. At this stage, it would be fruitful to refer to the following paragraphs of the reply of the respondent, which clearly establishes the fact that purchase orders were issued on the basis of the contract between the parties:

*“IV. Basis the agreement of terms of hire between the parties, the Respondent on 28.12.2012 issued a purchase order no. VIVID/2020-21/032 (hereinafter referred to as “PO-I”) to the Petitioner. It is pertinent to note that POI specifically provided the terms of the agreement between the parties with respect to the transaction.*

.....

**29. Re Paragraph 25:** *With respect to the averments made in Paragraph 25 of the Petition, the same are denied in toto and the Petitioner is put to strict proof of the same. Basis the agreement of terms of hire between the parties, the Respondent issued purchase orders which set out the terms which governed the transaction. Therefore, the Petitioner could not have relied upon Clause 3.1 of the Contract seeking pro-rata hire charges due to the alleged non-availability of clear Right of Way.”*

25. From reading of the documents, it can be inferred very clearly

that the contract dated 18.01.2021 is the main agreement executed between the parties and the purchase orders are part of the required services under the main agreement. Reference in this regard may be made to email dated 24.12.2020 issued on behalf of the respondent to the petitioner which clearly displays the intention of the parties. The email dated 24.12.2020 is reproduced for ready reference:

***“Kiran Gujarathi***

***From:*** manu.shukla@engie.com  
***Sent:*** 24 December 2020 13:48  
***To:*** Kiran Gujarathi  
***Cc:*** deshpande.anand@sanghvicranes.com;  
Vasanth.KUMAR@engie.com;  
deepak.khare@engie.com  
***Subject*** *LOI: Crane Package A+C for 6 months*  
*duration (15th Jan 2021 to 15th Jul 2021)*

*Dear Mr. Kiran,*

*Basis your revised quote dated 23th Dec 2020 and our various discussions, we are pleased to issue this LOI for providing 600 MT Crawler Crane package and loading-unloading package one set each, on hiring basis for erection and installation of VESTAS make V120 model 120m Hub height wind turbine, at our 250MW Wind Power project, District Tuticorin, Tamil Nadu.*

*The brief terms and conditions are as below;*

***1. Scope of work and Price:***

*To provide the below crane and associated infrastructure on monthly hiring prices basis;*

| Sr. No.                                               | Crane Package                       | Description/ Cranes Capacity                                              | UOM  | Qty.          |
|-------------------------------------------------------|-------------------------------------|---------------------------------------------------------------------------|------|---------------|
| 1                                                     | Crane Package for WTG Main Erection | 600/650T - LR1600-2/LR1750 or equivalent, Suitable to V120, 2.0 MW HH 120 | Nos. | 1             |
|                                                       |                                     | 200T MC - Tyre mounted telescopic crane                                   | Nos. | 1             |
|                                                       |                                     | 100T MC - Tyre mounted telescopic crane                                   | Nos. | 2             |
|                                                       |                                     | Hydraulics Axle/ Low Bed Trailer - Volvo                                  | Nos. | 2             |
|                                                       |                                     | Triple Axel Trailers                                                      | Nos. | 2             |
|                                                       |                                     | High Bed Trailers - Suitable                                              | Nos. | 4             |
| 2                                                     | WTG Loading/Unloading Crane Package | 200T MC - Tyre Mounted Telescopic Crane                                   | Nos. | 1             |
|                                                       |                                     | 100T MC - Tyre Mounted Telescopic Crane                                   | Nos. | 2             |
|                                                       |                                     | Palfinger-Suitable                                                        | Nos. | 1             |
|                                                       |                                     | Telehandler - Suitable                                                    | Nos. | 1             |
|                                                       |                                     | Hydra Crane - 14 MT                                                       | Nos. | 2             |
|                                                       |                                     | High Bed Trailers - Suitable                                              | Nos. | 1             |
| Amount for 1 Month without GST for line item 1 & 2    |                                     |                                                                           | INR  | 1,02,50,000/- |
| Amount for 6 month without GST                        |                                     |                                                                           | INR  | 6,15,00,000/- |
| Mobilisation Charges (one time) without GST           |                                     |                                                                           | INR  | 27,00,000/-   |
| Total Rental Charges for 6 Month's hiring without GST |                                     |                                                                           | INR  | 6,42,00,000/- |
| GST@ 18%                                              |                                     |                                                                           | INR  | 1,15,56,000/- |
| Total Order Value (6 Month hiring)                    |                                     |                                                                           | INR  | 7,57,56,000/- |

**2. Duration:**

The above-mentioned list of machines/ cranes packages shall be deployed for a period of 6 months starting from 15th Jan 2021 to 15th July 2021.

*Thereafter, Vivid may extend the deployment as per project requirement.*

### **3. Payment Terms:**

*First Advance: INR 27,00,000 plus GST (the mobilisation charges) shall be paid upon acceptance of this LOI within 3-4 working days.*

*Second Advance: INR 50,00,000 shall be paid against successful TPI report within 3-4 working days. The same shall be adjusted from first month invoice.*

*Monthly Payment: 100% payment for each line item shall be made on monthly (actual) deployment basis, upon submission of tax invoices along with log sheets duly signed by Vivid's site representative, within 20 days from invoices receipt date.*

**4. Special conditions:** The special conditions are as below;

| <b>Sr. No</b> | <b>Description</b>                                                       | <b>Remarks</b>                                                                                                              |
|---------------|--------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------|
| 1             | Working basis/ Shift Timings                                             | 24x7 basis/ As per Vivid Site Manager's instructions                                                                        |
| 2             | Crew/ Operator and fuel expenses                                         | In Sanghavi's scope                                                                                                         |
| 3             | Necessary consumables/ spares/ tools & tackles for Cranes/ trailers etc. | In Sanghavi's scope                                                                                                         |
| 4             | Food expenses, accommodation & conveyance for Crews                      | In Sanghavi's scope                                                                                                         |
| 5             | Log sheet signing by Vivid                                               | On daily basis on mutually agreed format                                                                                    |
| 6             | Break down of machine                                                    | Within 48 hours of breakdown, Sanghavi will arrange the repair/ replacement otherwise pro-rate deduction from monthly bill. |
| 7             | HSE / COVID-19 related guidelines                                        | Sanghavi shall depute dedicated HSE officer along with above package. The HSE                                               |

|    |                           |                                                                                                                                                                                                                                                                                                                                                                                            |
|----|---------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|    |                           | <i>and COVID-19 related guidelines shall be followed strictly at site. Engie/ Vivid's guidelines are attached herewith.</i>                                                                                                                                                                                                                                                                |
| 8  | <i>Permits/ approvals</i> | <i>Machine related permits and approvals shall be In Sumeet's scope.</i>                                                                                                                                                                                                                                                                                                                   |
| 9  | <i>Demobilization</i>     | <i>The date of demobilization shall be after 6 months from the date of deputation or as per mutually agreed.<br/>The demobilization shall be done with the written consent of Vivid or 15 days' notice from Vivid.<br/>If Vivid ask to demobilize before 6 months, INR 27 Lacs plus GST shall be paid over and above the price agreed as demobilization charges.</i>                       |
| 10 | <i>Load Test</i>          | <i>The cranes supplied by Sanghavi shall meet the performance parameters as per the load chart. Load test of the crane will be conducted by Sanghavi at site. The log sheet will only start upon successful load testing of the crane.</i>                                                                                                                                                 |
| 11 | <i>Other compliances</i>  | <i>Sanghavi shall produce/ comply below listed mandatory documentations;<br/>1. Crane Operators &amp; Riggers competency/ Training Certificate along with Employers Authorization.<br/>2. WC Policy with Medical Insurance/ Group Insurance.<br/>3. Third party liability insurance copy applicable for deployed packages.<br/>4. Valid TPI Certificates for Equipment' s, Tools &amp;</i> |

|    |                          |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |
|----|--------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|    |                          | <p><i>Tackles.</i></p> <p><i>5. Lifting Plan.</i></p> <p><i>6. Method Statement/ Work Instruction/ SOP.</i></p> <p><i>7. Risk Assessment /JSA.</i></p> <p><i>8. Safe Wind Speed for Crane operation as per Manufacturer recommendations.</i></p> <p><i>9. Equipment/ Tools &amp; Tackles Inspection Checklist.</i></p> <p><i>10. Crane Boom Up/ Boom Down Checklist.</i></p> <p><i>11. Load Charts &amp; Maintenance Log.</i></p> <p><i>12. Applicable labor compliances.</i></p> |
| 12 | <i>Visual inspection</i> | <p><i>Vivid representative shall visit the Kayathar, TN station on 28th December 2020 where 600T has been kept. Sanghavi to confirm the complete address and contact person details.</i></p>                                                                                                                                                                                                                                                                                      |
| 13 | <i>Company documents</i> | <p><i>For the purpose of registration/ billing, please share the below documents;</i></p> <p><i>1. Company Registration certificate</i></p> <p><i>2. GST Registration certificate</i></p> <p><i>3. Bank account details</i></p>                                                                                                                                                                                                                                                   |

*5. Equipment wise monthly rates shall be shared by Sanghavi upon receipt of this LOI;*

*6. No escalation in price and same terms shall be applicable, if the period of deployment extends beyond 6 months (i.e., after 15th July 2021) for the same site and same project.*

*7.Submission of crane/ associated T&P health documentation and Medical/ 3rd party insurance*

*and all the other documentation mentioned in point no. 11 above, is to be submitted within 7 days of this LOI;*

*8. Sanghavi to comply with state specific labour laws;*

*9. Billing and delivery address:*

**Vivid Solaire Energy Pvt. Ltd.**  
SF No. 93/2, 230KV Substation  
Ottanatam to Sillankulam main  
road, Sillankulam, Thoothukudi,  
Tamil Nadu – 628718  
**CIN: U74999PN2016PTC167751**  
**GSTIN: 33AAF7049E1ZC**

*10. Site Contact:*

Mr. Kumar Vasanth, Construction Manager  
[Vasanth.KUMAR@engie.com](mailto:Vasanth.KUMAR@engie.com),  
+918448099014

**Please treat this email LOI as final confirmation from our side for providing the aforementioned services and revert your acceptance on the same. The detailed contract shall be executed for the purpose of billing and capturing detailed terms and conditions.**(emphasis provided)

Regards,  
Manu Shukla”

26. In the aforesaid email, the respondent at the time of issuance of letter of intent for providing 600 MT Crawler Crane package, has clearly mentioned that the detailed contract shall be executed for the purpose of billing and capturing detailed terms and conditions. Thus, even if the purchase order dated 28.12.2020 was issued prior to the contract dated 18.01.2021, the intention of the parties can clearly be

gauged from their conduct and the documents on record.

27. Equally pertinent is the fact that in the contract dated 18.01.2021, it is stated that the respondent company has made an advance payment of Rs.31,86,000/- to the contractor towards one time mobilisation charges on 31.12.2020, vide the purchase order dated 28.12.2020. Hence, the purchase orders are clearly connected and linked to the contract between the petitioner and the respondent.

28. Parties may choose to enter into two different contracts covering the same transaction at different points of time. The purchase orders do not in any manner supersede the contract between the parties. The purchase orders having been issued on the basis of the contract between the parties, the parties would be governed by the arbitration clause as contained in the contract, even though the arbitration clause is not specifically incorporated in the purchase orders.

29. Supreme Court in the case of ***Balasore Alloys Ltd. Vs. Medima LLC, (2020) 9 SCC 136***, has delved upon a similar issue and has held that the contract between the parties is a comprehensive document encompassing all terms of the transaction between the parties, while purchase order is for the limited purpose of supply of the goods with no specific details. Thus, it has been held as follows:

*“17. In that view of the matter, when admittedly the parties had entered into the agreement dated 31-3-2018 and there was consensus ad idem to the terms and conditions contained therein which is comprehensive and encompassing all terms of the transaction and such agreement also contains an arbitration clause which is different from the*

*arbitration clause provided in the purchase order which is for the limited purpose of supply of the produce with more specific details which arises out of agreement dated 31-3-2018; the arbitration clause contained in Clause 23 in the main agreement dated 31-3-2018 would govern the parties insofar as the present nature of dispute that has been raised by them with regard to the price and the terms of payment including recovery, etc. In that view, it would not be appropriate for the applicant to invoke Clause 7 of the purchase orders more particularly when the arbitration clause contained in the agreement dated 31-3-2018 has been invoked and the Arbitral Tribunal comprising of Mr Jonathan Jacob Gass, Mr Gourab Banerji and Ms Lucy Greenwood has already been appointed on 22-6-2020.”*

30. The contract dated 18.01.2021 contains arbitration agreement between the parties in Clause 10, which is reproduced as below:

***“10. DISPUTES AND ARBITRATION***

***10.1. Dispute Resolution***

*(a) The Parties shall first endeavour to amicably resolve any controversy or claim (Dispute) arising out of or in connection with the validity, dispute or interpretation of the Contract.*

*(b) If the Parties are unable to resolve their Dispute within 30 days of receipt of a notice of a Dispute by one Party from the other Party, then either Party may require that the Dispute be finally settled in terms of the Indian Arbitration and Reconciliation Act, 1996 in effect as on the date of commencement of such arbitration. The arbitration shall be conducted by a mutually appointed sole arbitrator.*

*(c) The arbitration shall be conducted in English, and the venue of the arbitration will be New Delhi.”*

31. The respondent has not denied and disputed the existence and execution of the contract dated 18.01.2021 or the arbitration agreement as contained therein.

32. In view of the aforesaid discussion, the present petition is allowed. Thus, Justice Jayant Nath (Retired), Former Judge of this Court, Mobile No. 8527959494 is appointed as Sole Arbitrator to adjudicate the disputes between the parties.

33. The parties are directed to seek requisite disclosures under Section 12 of the Act from the ld. Sole Arbitrator before commencement of arbitration proceedings.

34. The learned Sole Arbitrator shall be entitled to fee as stipulated in the Fourth Schedule to the Act.

35. All rights and contentions of parties are left open for consideration by the learned Sole Arbitrator.

36. The present petition is disposed of in the aforesaid terms.

**(MINI PUSHKARNA)  
JUDGE**

**DECEMBER 15, 2022**

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