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IN THE HIGH COURT OF DELHI AT NEW DELHI***JUDGMENT RESERVED ON :29.11.2023***

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JUDGEMENT PRONOUNCED ON:20.12.2023**+ ARB.P. 213/2023****M/S METSO OUTOTEC INDIA PVT. LTD**

...Petitioner

Through: Mr. Kaustubh Sinha and
Ms. Surbhi Mehta,
Advocates

versus

M/S TRAFALGAR EPC PVT. LTD

...Respondent

Through: Ms. Divita Vyas and Mr.
Prashant Mehta,
Advocates

CORAM:**HON'BLE MR. JUSTICE DINESH KUMAR SHARMA****J U D G M E N T****DINESH KUMAR SHARMA, J.**

1. The present petition has been filed under Section 11(5) of the Arbitration and Conciliation Act, 1996 (the "A & C Act") seeking appointment of an independent sole arbitrator to adjudicate the disputes *inter se* arising between the parties pertaining to the purchase order dated 13.07.2016.
2. In the present case, the petitioner is stated to be in the business of aggregates, mineral processing, metal refining products, technologies and services for this industry throughout India and countries abroad.



The respondent is a global premier multidisciplinary design, consultancy and contracting organization where the company's core strength lies in the Railway and Metro Projects, mining along with beneficiation of Metal and Mineral ores, Iron and Steel making, Industrial packaging, Power Generation, Chemicals and Petrochemicals, Port and Bulk Material Handling,

3. The disputes between the parties have arisen in the context of a purchase order dated 13.07.2016 bearing reference no. TEPCIBSLSP2/SSC/2 executed between the parties for Design, Engineering, Manufacture, Fabrication, Assembly Painting, Inspection, Testing, Supply, Transportation and Delivery of Hearth Layer and return Fines Sinister Screens in relation to a project relating to the installation of 360 sqm. of sinter plant for SAIL Bokaro Steel Plant at Bokaro, India being executed by the Respondent.
4. Pursuant to the Purchase order, the petitioner was required to obtain written dispatch clearance, before any goods/items could be dispatched and the respondent was obligated to make all the efforts to issue the dispatch Clearance certificate within 30 days to the petitioner as per clause 5.1.3 of the Special Conditions of the contract “hereinafter referred to as SCC”, However, for several reasons the petitioner could not obtain the same which resulted in petitioner incurring huge losses. As a result, the order was delayed, which also led to conflict regarding the payments.
5. Subsequently, after being constrained from the non-issuance of dispatch clearance and consequent losses, the Petitioner raised a Pro-forma invoice dated 15.07.2019 on the Respondent in accordance with



Clause 5.1.3 of SCC and after a series of representations from the petitioner regarding the payments, the purchase order dated 13.07.2016 was terminated vide email/notice by the Petitioner and the same was intimated to the respondent vide communication dated 14.05.2020 addressed to the petitioner which reads as under:

Date: 14th May 2020
Ref: MIP/ Trafalgar/01

To,
Trafalgar EPC Private Ltd
Unit No 108, BPTP Park Centre
Sector 30, Gurgaon -122001
Haryana (India)

Kind Attn: - Mr. Ravindra Deshpande, Head of Engineering & Projects.

Subject- Notice of Termination

Reference: 1. Purchase Order No-TEPC/BSL-5P2/SSC/2/A-3 dated 24-June-2019
2. Our Email dated 15th July 2019

Dear Sir,
Hope this letter finds you well and everyone in Trafalgar is safe.

As you are aware that since last year, we have been following up with Trafalgar to seek dispatch clearance of the goods already manufactured and ready for delivery. However, despite our multiple follow-ups and attempts to resolve the impasse regarding dispatch clearance, we haven't seen any progress whatsoever.

Further, our request to you to release 77.5% of the purchase order price as per the terms of the order have also been completely ignored by you. You are aware as per the terms of the order this amount should have been released to us by now. Also, for the purposes of this contract, we had procured substantial amount of material from our vendors which is, unfortunately, remaining idle.

Hence, in view of the material breach committed by Trafalgar, we hereby terminate the abovementioned purchase order. We are in the process of assessing the cost incurred due to this purchase order and intend to communicate the same to you in due course. But, in the meanwhile, we would like to again reiterate our claim and advise you to forthwith pay us following amounts due and payable to us as per the terms of the purchase order:

No.	Description	Amount
1.	02 Hearth Layer & 01 Return Flues screen	INR 1,77,46,518.85
2.	Interest (18%)	INR 31,94,373.393
	Total	INR 2,09,40,892.243

This claim is without prejudice to any of our rights and interest under the purchase order and applicable law. We reserve our right to submit appropriate claim regarding all the cost and expenses including any of our entitlements under the purchase order and applicable in due course.

Sincerely,
For Meiso India Private Limited



6. Admittedly, as per the special conditions of the contract pertaining to the purchase order dated 13.07.2016, Clause 9 of the SCC contains an arbitration clause which reads as under: -

9. Settlement of Dispute

Any disputes or differences whatsoever, arising between the parties Out of or relating to the construction, meaning, scope, operation or effect of this Purchase order shall be settled between the Purchaser and the Supplier amicably. If however, the Purchaser and the Supplier are not able to resolve their disputes/differences amicably, the said disputes/differences shall be settled by Conciliation, failing which, through Arbitration. Conciliation shall be resorted to prior to invoking Arbitration. 'the Arbitration Clause is to be invoked by the parties to the Contract only on failure of conciliation proceedings to amicably settle the disputes. The arbitration shall be governed by the Rules of Arbitration and Conciliation Act 1996, as amended from time to time. The language of arbitration shall be English and the venue of the arbitral proceedings shall be New Delhi. The parties may, however, mutually agree to any other venue in India for the arbitral proceedings.

7. Learned counsel on behalf of the petitioner submits that the said Agreement contains an arbitration clause, which provides that all disputes, with respect to the said agreement, shall be referred to arbitration as per provisions of the A&C Act, and further provides that the place of arbitration would be at Delhi.
8. Disputes having arisen between the parties, the petitioner issued a conciliation legal notice under section 62 of the Arbitration and Conciliation Act, 1996 dated 09.08.2022, followed by notice invoking arbitration dated 01.11.2022, whereby the petitioner invoked



arbitration in terms of the arbitration clauses contained in the agreement dated 13.07.2016.

9. It is further submitted on behalf of the petitioner that the respondents have not responded to the said legal notice under section 62 and notice invoking arbitration dated 13.07.2016 in the stipulated period and consequently, the petitioner has preferred the present petition seeking the appointment of a sole arbitrator.
10. Learned counsel for the respondents does not dispute the existence of the arbitration agreement between the parties and submits that he does not have any objection if an independent sole Arbitrator is appointed by this court to adjudicate the dispute between the parties.
11. The court has gone through the record.
12. This court has also pursued that the purchase order dated 13.07.2016 containing the arbitration clause clearly indicates that the purchase order is unstamped.
13. The Supreme Court in ***In Re: Interplay Between Arbitration Agreements under the Arbitration And Conciliation Act 1996 and The Indian Stamp Act 1899***, 2023 SCCOnline SC1666 it was *inter-alia* held as under:

218. The discussion in preceding segments indicates that the referral court at Section 11 stage should not examine or impound an unstamped or insufficiently stamped instrument, but rather leave it for the determination by the arbitral tribunal. When a party produces an arbitration agreement or its certified copy, the referral court only has to examine whether an arbitration agreement exists in terms of Section 7 of the Arbitration Act. The referral court under Section 11 is not required to examine whether a certified copy of the agreement/ instrument/ contract



discloses the fact of payment of stamp duty on the original. Accordingly, we hold that the holding of this Court in SMS Tea Estate (supra), as reiterated in N N Global 2 (supra), is no longer valid in law.

14. The existence of the arbitration clause in the agreements dated 13.07.2016 is not in dispute. Since the existence of the arbitration agreement in the agreements is not in dispute, there is no impediment in appointing an independent sole Arbitrator as contemplated therein, to adjudicate the disputes between the parties thereto
15. In view of the above, this Court considers it proper to allow the present petition. Accordingly, Mr. Brijesh Sethi, (Former Judge of Delhi High Court) (Mobile No.9910384669) is appointed as the sole Arbitrator to adjudicate the disputes between the parties with respect to the Agreements. The arbitration shall be conducted under the aegis of DIAC.
16. The respondent shall be entitled to raise preliminary objections as regards jurisdiction/arbitrability before the learned arbitrator, which shall be decided by the learned arbitrator, in accordance with law.
17. The learned Sole Arbitrator may proceed with the arbitration proceedings subject to furnishing to the parties requisite disclosures as required under Section 12 of the A&C Act.
18. The learned Sole Arbitrator shall be entitled to fee in accordance with the Fourth Schedule to the A&C Act; or as may otherwise be agreed to between the parties and the learned Sole Arbitrator
19. The Parties shall share the fee of the learned sole Arbitrator and arbitral costs, equally.



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20. All rights and contentions of the parties in relation to the claims/counter-claims are kept open, to be decided by the learned sole Arbitrator on their merits, in accordance with law.
21. Needless to say, nothing in this order shall be construed as an expression of this court on the merits of the case.
22. The present petition stands disposed of in the above terms.

DINESH KUMAR SHARMA, J

DECEMBER 20, 2023

Pallavi/AK