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

+ **ARB.P. 16/2024 & I.A. 218/2024**

**B. GOUTAM AND COMPANY, THROUGH ITS SOLE
PROPRIETOR** Petitioner

Through: Mr. Amogh Bansal, Mr. Vedant
Sharma and Mr. Ashish Pandey,
Advocates.

versus

**TELECOMMUNICATIONS CONSULTANTS
INDIA LIMITED** Respondent

Through: Mr. Rakesh Chaudhary and Ms.
Tanvi, Advocates.

**CORAM:
HON'BLE MR. JUSTICE PRATEEK JALAN**

ORDER
05.01.2024

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1. Issue notice. Mr. Rakesh Chaudhary, learned counsel, accepts notice on behalf of the respondent.
2. By way of this petition under Section 11 of the Arbitration and Conciliation Act, 1996 [“the Act”], the petitioner seeks appointment of an arbitrator to adjudicate disputes arising between the parties under an agreement dated 26.04.2013 [“the Agreement”].
3. By virtue of the said Agreement, the petitioner was awarded a contract for a construction project. The Agreement contains an arbitration clause [Article 15.6], which provides for arbitration by an arbitrator appointed by the Chairman and Managing Director [“CMD”] of the respondent. New Delhi has been designated as the venue of the



arbitration. The Courts in New Delhi are vested with exclusive jurisdiction to entertain matters arising out of the agreement.

4. According to the petitioner, it is entitled to receive certain payments from the respondent under the said agreement. It raised various bills upon the respondent in this connection, which remain unpaid. Ultimately, by a communication dated 20.07.2023, the petitioner issued a “*notice of dispute*” under Article 15.6 of the Agreement, claiming a sum of Rs.79.4 lacs as the balance sum due, alongwith loss of profits and interest. In its response dated 28.07.2023, the respondent stated that payment under the Agreement was to be made upon receipt of payment by the respondent from its client, namely – Rajasthan Urban Drinking Water Sewerage and Infrastructure Corporation Limited, in terms of Article 5 of the Agreement. It is stated in the letter that payment would be released to the petitioner once payment is received from the respondent’s client.

5. The petitioner thereafter invoked arbitration by a communication of its counsel dated 04.09.2023. The said communication has failed to elicit a response.

6. Mr. Chaudhary submits that, according to the respondents, there is in fact no dispute requiring adjudication. He states that the communication dated 28.07.2023 clearly makes reference to Article 5 of the Agreement, which states that payment would be released to the petitioner upon receipt from the client as per contract terms and conditions. He further submits that Article 15.6 of the Agreement requires appointment of the arbitrator by the CMD of the respondent.

7. In view of the fact that the existence of the agreement and the



arbitration clause therein is undisputed, I am of the view that the appropriate course is to appoint an arbitrator to adjudicate the disputes between the parties. Although Article 15.6 provides for appointment of the arbitrator by the CMD of the respondent, Mr. Chaudhary does not dispute that such a unilateral appointment is impermissible in view of the judgments of the learned Supreme Court in *TRF Limited vs. Energo Engineering Projects Limited* [(2017) 8 SCC 377] and *Perkins Eastman Architects DPC & Anr. vs. HSCC (India) Limited* [(2020) 20 SCC 760]. Further, Mr. Chaudhary's submission that there is no dispute requiring adjudication is also meritless. The respondent's reliance upon Article 5 of the Agreement to decline payment to the petitioner at this stage, itself reveals the existence of a dispute as to the proper interpretation of the Agreement. The matter is thus one upon which the arbitrator would have to adjudicate.

8. For the aforesaid reasons, the petition is allowed and the parties are referred to arbitration of Mr. K. Parameshwar, Advocate (Tel:98181-13824).

9. With the consent of learned counsel for the parties, the parties are referred to arbitration under the aegis of Delhi International Arbitration Centre, Delhi High Court, Shershah Road, New Delhi ["DIAC"], and will be governed by the Rules of DIAC, including as to remuneration of the learned Arbitrator.

10. The learned Arbitrator is requested to furnish a declaration under Section 12 of the Act, prior to entering upon the reference.

11. If the respondent has counter claims, those may also be placed before the learned Arbitrator in accordance with law.



12. It is made clear that this Court has not adjudicated the rights and contentions of the parties on merits, which are reserved for adjudication by the learned Arbitrator.

13. The petition, alongwith pending application, is accordingly disposed of.

PRATEEK JALAN, J

JANUARY 5, 2024
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