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

+ **ARB.P. 63/2024**

RISHABH CONSTRUCTIONS PVT. LTD. Petitioner

Through: **Mr. Dinesh Kumar Sharma and Mr.B.
K. Sharma, Advs. (VC)**

versus

UNION OF INDIA & ANR. Respondents

Through: **Mr. Harish Vaidyanathan Shankar,
CGSC with Mr.Srish Kumar Mishra,
Mr. Alexandar Mathai Paikaday, Mr.
Krishnan V. Advs.**

CORAM:

HON'BLE MR. JUSTICE DINESH KUMAR SHARMA

ORDER

% **16.01.2024**

I.A. 1115/2024 (Exemption)

Exemption is allowed subject to all just exceptions.

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1. By way of present petition filed under Section 11(6) of the Arbitration and Conciliation Act, 1996 (hereinafter, referred to as the '*A&C Act*'), the petitioner seeks appointment of Arbitral Tribunal comprising of a sole arbitrator, to adjudicate the disputes between the parties.
1. Learned counsel for the petitioner submits that the parties had entered into a Work Agreement wherein Letter of Acceptance vide letter No. 84836/MAP/PH-II/PKG-21/3/(R&C)/239/E8 dated 28.08.2014 which provides that disputes with respect to the agreement shall be resolved through arbitration as per provisions of A&C Act. The arbitration



clause (clause-60) of Letter of Acceptance vide letter No. 84836/MAP/PH-II/PKG-21/3/(R&C)/239/E8 which reads as under;

“60. All disputes, between the parties to the contract (other than those for which the decision of the DG MAP or any other person is by the contract expressed to be final and binding) shall, after written notice by either party to the Contract to the other of them, be referred to the sole arbitration of serving officer having degree in engineering or equivalent or having passed Final/Direct Final Examination of Sub Division II of Institution of Surveyors (India) recognised by the Govt. of India to be appointed by the Engineer-in-Chief or Director General of Works if specifically delegated in writing by Engineer-in-chief, Army Headquarters, New Delhi whose decision shall be final, conclusive and binding. The Arbitration shall be governed by the Arbitration and Conciliation Act, 1996.

Unless both parties agree in writing, such reference shall not take place until after the completion or alleged completion of the Works or termination or determination of the Contract under Condition Nos. 49 and 50 hereof.

Provided that in the event of abandonment of the works or cancellation of the Contract under Condition Nos. 46, 47, or 48 hereof, such reference shall not take place until alternative arrangements have been finalised by the Government to get the works completed by or through any other Contractor or Contractor or Agency or Agencies.

Provided always that commencement or continuance of any arbitration proceedings hereunder or otherwise shall not in any manner militate against the Government's right of recover from the contractor as provided in condition 57 hereof.

If the Arbitrator so appointed resigns his appointment or vacates his offices or is unable or unwilling to act due to any reason, whatsoever, the authority appointing him may appoint a new Arbitrator to act in his place.



The Arbitrator shall be deemed to have entered on the reference on the date he issues notice to both parties, asking them to submit to him their statement of case and pleading in defense.

The Arbitrator may proceed with the arbitration, ex parte, if either party, in spite of a notice from the Arbitrator, fails to take part in the proceedings.

The Arbitrator shall give his reasoned award in writing on all matters referred to him and shall indicate his findings, along with sums awarded, separately on each individual item of dispute. The venue of arbitration shall be such place or places as may be fixed by the Arbitrator in his discretion.

The award of the Arbitrator shall be final and binding on both the parties to the Contract.”

2. It further provides that the place of arbitration would be at New Delhi.
3. Disputes having arisen between the parties, the petitioner invoked arbitration vide notice dated 07.11.2023, issued under Section 21 of the A&C Act. However, the respondents have not responded to the notice.
4. Learned counsel for the petitioner submits that there is a claim of Rs. 24 crores and there may be certain additional claims also.
5. Issue notice.
6. Learned counsel for the respondent has accepted the notice.
7. Learned counsel for the respondent has fairly submitted that there is an arbitration clause and arbitrable disputes have arisen between the parties.
8. It is also undisputed that the tender was accepted at Delhi under clause 61 and therefore the Delhi Courts will have the jurisdiction. The jurisdiction under Section 11 of the Code at the time of reference



of the disputes is very limited. The Court is only required to see whether they exist in arbitration clauses and arbitrable disputes between the parties and there is no dispute as to the jurisdiction of the court.

9. Considering that both the parties have consented to the reference to the arbitral tribunal, the present petition is disposed of with the following directions:

- i) The disputes between the parties under the said agreement are referred to the arbitral tribunal.
- ii) As agreed by both the counsels for the parties, Ms. Justice Geeta Mittal, Former Chief Justice of J & K High Court (Mobile No.981800020) is appointed as Sole Arbitrator to adjudicate the disputes between the parties.
- iii) The remuneration of the learned Arbitrator shall be in terms of Schedule IV of the A&C Act or as the parties may agree.
- iv) The learned Arbitrator is requested to furnish a declaration in terms of Section 12 of the Act prior to entering into the reference.
- v) It is made clear that all the rights and contentions of the parties, including as to the arbitrability of any of the claim, any other preliminary objection, as well as claims on merits of the dispute of either of the parties, are left open for adjudication by the learned arbitrator.
- vi) The parties shall approach the learned arbitrator within two weeks from today.



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

DINESH KUMAR SHARMA, J

JANUARY 16, 2024

Pallavi