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

+ **ARB.P. 93/2023 & I.A. 22542/2023**

M/S MOONDROP CHEMINEERS PVT. LTD Petitioner

Through: Mr. Jaspreet Singh, Ms. Nandini
Singh and Mr. Arvind Singh Negi,
Advocates.

versus

M/S CO-OPERATIVE COMPANY LIMITED Respondent

Through: None.

CORAM:

HON'BLE MR. JUSTICE ANUP JAIRAM BHAMBHANI

ORDER

21.02.2024

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The matter has been received upon being released from 'part-heard' by the Predecessor Bench *vide* last order dated 02.02.2024.

2. Notice on this petition was issued on 31.01.2023; however, no reply has been filed by the respondent till date.
3. No one is present on behalf of the respondent when the matter is called-out. The record shows that repeated attempts at serving court notice on the respondent have also failed.
4. Mr. Jaspreet Singh, learned counsel appearing for the petitioner submits, that as evidenced by affidavits of service dated 04.04.2023, 25.05.2023 and 15.12.2023 filed by them, the respondent was served *dasti*, as well as through e-mail and speed-post at their registered office address in Gurugram, Haryana.
5. After perusing the affidavits of service, this court is satisfied that the respondent has been duly served in the matter, but has chosen not to be represented.



6. The respondent is accordingly set *ex-parte*.
7. The disputes are stated to have been arisen from a set of Purchase Orders dated 12.03.2019, 30.03.2019 and 29.08.2019 placed by the respondent upon the petitioner in hard-copy; in addition to another Purchase Order placed by way of e-mail dated 03.04.2019.
8. Mr. Singh has drawn the attention of this court to an unnumbered clause/paragraph in the said Purchase Orders which comprises the arbitration agreement; and contemplates reference of disputes between the parties to arbitration in accordance with the Arbitration & Conciliation Act 1996 ('A&C Act'); with the 'place' of arbitration being at New Delhi. The arbitration clause/paragraph reads as under :

“ARBITRATION : That all disputes related to the Purchase order shall be referred to the sole Arbitrator appointed by the M/s Co-operative Company Ltd., H.O. under arbitration & Conciliation Act-1996, whose decision shall be final & binding upon both the parties and Place of Arbitration shall be NEW DELHI only”

9. Though, to be clear, there is no express arbitration provision contained in the fourth Purchase Order dated 03.04.2019, which is stated to have been received by e-mail, Mr Singh explains that the said Purchase Order was part of the same transaction and would therefore also be amenable to arbitration.
10. In the opinion of this court, though there remains some doubt as to whether the disputes that are stated to have arisen from the fourth Purchase Order could be subject to arbitration, there is no doubt that the other 03 Purchase Orders comprise a specific arbitration clause; with a further stipulation that the place of arbitration would be at New Delhi.



11. Furthermore, it is noticed that the addresses of both parties, *i.e.* the petitioner and the respondent as indicated on the Purchase Orders, are within Delhi. In view thereof, this court also does not entertain any doubt in relation to the territorial jurisdiction to entertain and decide the present petition.
12. Insofar as the question of whether, in terms of the arbitration clause, the respondent would have had the right to unilaterally appoint an arbitrator, that provision of the arbitration clause is, in any case, untenable in law in view of the decision of the Supreme Court *inter-alia* in ***Perkins Eastman Architects DPC & Anr. vs. HSCC (India) Ltd.***¹ However, that part of the arbitration clause is severable; and as a result, this court is entitled to ignore the portion of the arbitration clause that contemplates unilateral appointment of the arbitrator by the respondent, and to proceed with the remaining portion of the clause that would continue to survive.
13. As per the record, the petitioner invoked arbitration *vide* Notice dated 22.11.2022; to which the respondent has not sent any reply.
14. As a sequitur to the above, this court is satisfied that there is a valid and subsisting arbitration agreement between the parties; that this court has territorial jurisdiction to entertain and decide the present petition; and also that the disputes that are stated to have arisen between the parties, as set-out *inter-alia* in invocation notice dated 22.11.2022, do not appear *ex-facie* to be non-arbitrable.

¹ (2020) 20 SCC 760



15. Accordingly, the present petition is allowed and **Ms. Jyoti P Nambiar, Advocate (Cellphone No.: +91 9899127654)** is appointed as the learned Sole Arbitrator to adjudicate upon the disputes between the parties.
16. The learned Sole Arbitrator would furnish to the parties requisite disclosures as required under section 12 of the A&C Act; and in the event there is any impediment to the appointment on that count, the parties are given liberty to file an appropriate application in this court.
17. The learned Arbitrator shall be entitled to fee in accordance with Fourth Schedule to the A&C Act; or as may otherwise be agreed to between the parties and the learned Arbitrator.
18. Parties shall share the arbitrator's fee and arbitral costs, equally.
19. All rights and contentions of the parties in relation to the claims/counter-claims are kept open, to be decided by the learned Arbitrator on their merits, in accordance with law.
20. Parties are directed to approach the learned Arbitrator appointed within 15 days.
21. A copy of this order be communicated by the Registry *via* e-mail to the learned Sole Arbitrator.
22. The petition stands disposed-of in the above terms.
23. Other pending applications, if any, also stand disposed-of.
24. A copy of this order be also communicated *via* e-mail by the Registry to the respondent at the e-mail ID available on record.

ANUP JAIRAM BHAMBHANI, J

FEBRUARY 21, 2024/V.Rawat