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

+ **ARB.P. 162/2024**

DATA TECHNOSYS ENGINEERS PVT.LTD. Petitioner

Through: **Mr.Love Kumar Gupta and
Mr.Ashvin Raj Jaiswal, Advts.**

versus

RAIL VIKAS NIGAM LIMITED. Respondent

Through: **Mr.Udit Seth, Ms. Ipshita, Mr.
Roshan Roy, advts.**

CORAM:

HON'BLE MR. JUSTICE DINESH KUMAR SHARMA

ORDER

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26.02.2024

1. The present petition has been filed under Section 11 (5) read with Section 11 (6) of the Arbitration and Conciliation Act, 1996 seeking the appointment of the arbitral tribunal comprising of a sole arbitrator for adjudication of the disputes which have arisen between the parties.
2. The respondent floated a tender inviting bids for Project Management Consultancy for “Construction of 2nd Railway Line from existing take-off point within HDC, KOPT’s Limit (Km-H-59/11) to G Cabin at Bulk Handling Yard, Haldia Dock Complex on Kharagpur Division of South Eastern Railway in West Bengal, India” *vide* letter dated 20th February 2018 through IFB from eligible pre-qualified bidders. The bid of the petitioner was accepted as being the lowest among all bidders, pursuant to which a Letter of Award dated 20.10.2018 was issued. Subsequently, the respondent submitted the Performance Bank



Guarantee dated 14.11.2018 issued by Kotak Mahindra Bank Limited in terms of the LOA dated 20.10.2018 for an amount equivalent to 10% of the contract price i.e. INR 11,29,590/- (Rupees Eleven Lakh Twenty-Nine Thousand Five Hundred Ninety Only) in favour of the respondent.

3. The petitioner stated that since the project was delayed due to various reasons, the Petitioner's term was extended up to 30th July 2022. It has further been submitted that during the subsistence of works and upon completion of the project, the Respondent has acted in breach of the terms of the Agreement by paying the Claimant much less than the amount it was legally and contractually entitled to under the Agreement. It has been submitted that the substantial amount of payment payable to the Claimant under the Agreement remains outstanding to date.
4. The petitioner aggrieved of this issued a notice dated 28.06.2023. It has been submitted that the parties failed to reach to any mutual resolution and the respondent rejected all the legitimate claims of the petitioner.
5. The petitioner invoked the arbitration vide notice dated 10.11.2023. The petitioner has submitted that there is a claim of around Rs.28 lakhs.
6. Learned counsel for the respondent has submitted that the present petition is not maintainable as it is in violation of clause 16.02 of the General Conditions of Contract. Learned counsel submits that the clause specifically provides that only such dispute(s) or difference(s) in respect of which the demand had been made for amicable settlement under clause 16.0 1 but could not be settled, together with counterclaims or set off, given by the Employer, shall be referred to



arbitration subject to the condition that total amount of claims in the contract is not exceeding 20% of the contract price.

7. Learned counsel for the respondent submits that as per the notification award dated 20.10.2018, the contract price has been given as Rs.1,12,95,900. Learned counsel submits that even as per the 45th RA bill, the value of the contract is Rs.1,12,95,900/-. Learned counsel submits that since the amount claimed is more than 20% of the contract price, the matter cannot be referred to arbitration.
8. *Per contra*, learned counsel for the petitioner submits that there is no dispute that the initial contract value of contract value was Rs.1,12,95,900/-, however, the work was to be completed within 24 months which could not be completed due to the reasons attributed to the respondent. It has been submitted that an extension was granted for a further period of 12 months. It has been submitted that on account of the extension, there is an increase in prices. The contract price even as per the 45th RA bill escalated to Rs.2,25,32,428.90/- and this amount has been paid by the respondent to the petitioner. The respondent has relied upon *M/S BCC- Monalisha (JV) vs. Container Corporation of India Limited*, 2023:DHC:6189.
9. The jurisdiction of the court while deciding the petition under Section 11 is very limited to examining whether an arbitration agreement exists between the parties. Reliance can be placed on *M/S Duro Felguera, S.A. vs Gangavaram Port Limited*¹ wherein the court inter-alia held as under:

“The scope of the power under Section 11 (6) of the 1996 Act was

¹ (2017) 9 SCC 729



considerably wide in view of the decisions in SBP and Co. (supra) and Boghara Polyfab (supra). This position continued till the amendment brought about in 2015. After the amendment, all that the Courts need to see is whether an arbitration agreement exists-nothing more, nothing less. The legislative policy and purpose is essentially to minimize the Court's intervention at the stage of appointing the arbitrator and this intention as incorporated in Section 11 (6A) ought to be respected."

10. The dispute raised in the present case is whether the claim amount is less than 20% of the contract. As per the respondent the contract price as indicated in the LOA was Rs.1,12,95,900/- Whereas the plea of the petitioner is that on account of extension, the contract price increased to more than Rs.2.25 crores.
11. The court at this stage cannot enter into the meticulous examination of this fact. Hence the matter is referred to the arbitration and 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) Mr.Amit Gupta, Advocate (Mob. No.9810273846) is appointed as an Arbitrator to adjudicate the disputes between the parties.
 - iii) The arbitration will be held under the aegis of the Delhi International Arbitration Centre, Delhi High Court, Sher Shah Road, New Delhi hereinafter, referred to as the 'DIAC'). The remuneration of the learned Arbitrator shall be in terms of fee rules of the DIAC schedule 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 claims, 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.

DINESH KUMAR SHARMA, J

FEBRUARY 26, 2024/rb.