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

+ **ARB.P. 199/2024**

RLJ INFRACEMENT PRIVATE LIMITED Petitioner

Through: Mr. Anirduddha Bhattacharya,
Adv.(VC) with Mr. Aditya Shankar
Pandey, Mr. Arnab Roy, Advs.

versus

NEO HBM PRIVATE LIMITED Respondent

Through: Mr. Harsh Agrawal, Adv. (VC)

CORAM:
HON'BLE MR. JUSTICE DINESH KUMAR SHARMA

ORDER

18.03.2024

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1. By way of the 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 an Arbitral Tribunal comprising of a sole arbitrator, to adjudicate the disputes between the parties.
2. Learned counsel for the petitioner submits that the parties had entered into a Cement Sale and Purchase Agreement dated 27.04.2022. Clause-19.2 of the Cement Sale and Purchase Agreement dated 27.04.2022 provides as under;

“19.2 Arbitration

Any dispute which cannot be settled within Thirty(30) days of mutual consultation as provided above shall be referred to arbitration by either of the Parties upon written notice to that effect to the other Party. The Parties will mutually appoint a Sole Arbitrator and in case of any disagreement, the Arbitrator shall be



appointed by the Hon'ble High Court of Delhi. The arbitration shall be conducted at New Delhi in accordance with the provisions of the Arbitration & Conciliation Act, 1996. The language of the arbitration proceedings shall be in English language. Subject to this clause on arbitration, the Parties agree that the arbitration award shall be final and binding upon the Parties. The courts at New Delhi shall have exclusive jurisdiction for the enforcement of an arbitral award or for seeking injunctive relief or in case of appeal against arbitral awards passed by an arbitration panel pursuant to this Clause."

3. Both parties are registered companies incorporated under the provisions of the Companies Act, 2013.
4. The petitioner has stated that after execution of the agreement, the respondent could not fulfil the minimum order amount in the first two quarters and the petitioner served a notice of termination of the Agreement dated 31.08.2022 to terminate the agreement w.e.f. 30.11.2022. Thereafter, the petitioner wrote to the Respondent on multiple occasions to clear the outstanding payments in lieu of the shortfall of the minimum order quantity and the supply of cement already made to the respondent. However, the respondent refused to make such payments. The petitioner, thereafter, issued a Demand Notice under the Insolvency and Bankruptcy Code, 2016 dated 16.03.2023 for demanding payment of Rs.1,09,01,093.79/- from the respondent.
5. The respondent vide reply dated 31.03.2022, in their reply, denied the claim of the petitioner. The petitioner submitted that thereafter the arbitration was invoked vide notice dated 13.04.2023, issued under Section 21 of the A&C Act. The claim amount is of



Rs.1,09,01,093.79/-.

6. Learned counsel submits that the respondent replied to the same vide email dated 17.04.2023. Learned counsel submits that this fact was inadvertently left to be mentioned in the petition. However, the learned counsel submits that in their reply also, the respondent denied their liability.
7. Sh. Harsh Agrawal has appeared on behalf of the respondent.
8. Learned counsel submits that firstly the respondents were never served with the summons of the Court. Learned counsel submits that he was only served only with a copy of the order passed on 13.02.2024 and 12.03.2024.
9. Learned counsel submits that in terms of Clause -19.1 of the agreement, the petitioner never resorted to the mutual settlement of the disputes. Therefore, the present petition is premature and liable to be dismissed.
10. The jurisdiction of the Court while entertaining petitioner 11 (6) of the Act is very limited.
11. The scope of jurisdiction of the court under section 11(6) of the Arbitration and Conciliation Act is very limited to examine whether an arbitration agreement exists between the parties. Reliance can be placed on *M/S Duro Felguera, S.A. vs Gangavaram Port Limited* (2017) 9 SCC 729 wherein the court inter-alia held as under:

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

12.The Court while making any reference under Section 11 of the A&C Act has to see that whether the terms and conditions of the agreement have been complied with in substance or not. In the present case, the petitioner has duly been served with the demand notice. In reply to the same, the respondent has denied their liability. Therefore, apparently, any chances of mutual settlement seem to be not possible.

13.However, keeping all the contentions open, to be decided by the learned Arbitrator, the Court appoints Mr. Justice Pankaj Jaiswal, Former Judge, Mobile No.9425155450 is appointed as an Arbitrator to adjudicate the disputes between the parties.

v.)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.

vi.) The learned Arbitrator is requested to furnish a declaration in terms of Section 12 of the Act prior to entering into the reference.

vii.) 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.

viii.) The parties shall approach the learned arbitrator within two weeks from today.

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

DINESH KUMAR SHARMA, J

MARCH 18, 2024

Pallavi