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

+ **ARB.P. 266/2024**

RAHEE- EMRAIL (JV)

.....Petitioner

Through: Mr. P. V. Dinesh, Sr. Advocate with
Mr. Nishant Das, Mr. Atul Kumar,
Ms. Aatrayi Das, Ms. Srishti Bajpai,
Ms. Anna Oommen, Mrs. Sakshi
Malviya, Advocates

versus

MAHARASHTRA METRO RAIL CORPORATION LIMITED

.....Respondent

Through: Mr. V.S.R. Krishna and Mr. V
Shashank Kumar, Advocates

CORAM:

HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

ORDER

12.12.2024

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1. The Petitioner has approached this Court under Section 11(6) of the Arbitration and Conciliation Act, 1996 seeking appointment of an Arbitrator to adjudicate on the disputes which have arisen between the parties under a Contract for "Supply, Installation, Testing and Commissioning of Ballast less Track of Standard Gauge for two lines namely, (i) North-South Corridor of Line-1 (Sitaburdi - Khapari); and East West Corridor of Line – 2 (Sitaburdi- Lokmanya Nagar) at Sections of Nagpur Metro Rail Project".
2. The contract was awarded to the Petitioner herein which is a joint-venture registered in Kolkata. The Letter of Acceptance (LoA) was issued on 03.07.2017. Clause 13 of the said LoA reads as under:



“13. For all matters related to the said contracts the jurisdiction of courts in case of litigation shall be Courts at Nagpur, Maharashtra.”

3. A Contract Agreement dated 28.03.2018 was entered into between the parties. Clause 2 of the said Contract Agreement stipulates that the documents mentioned in the said clause shall be deemed to form and be read and construed as part of the Contract Agreement. Clause 2 of the Contract Agreement dated 28.03.2018 reads as under:

“2. The following documents shall be deemed to form and be read and construed as part of this Agreement. This Agreement shall prevail over all other Contract documents:

- (i) the Letter of Acceptance*
- (ii) the letter of Bid and Appendix to Bid (including the signed Statement of Integrity)*
- (iii) the addenda Nos. I,II,III,IV & V*
- (iv) the Particular Conditions*
- (v) the General Conditions;*
- (vi) the Technical Specifications*
- (vii) the Drawings and*
- (viii) the completed Schedules and any other documents forming part of the contract, along with any communication accepted by the employer.”*

4. A perusal of the above shows that the Letter of Acceptance, the particular conditions and the General Conditions has to be read and construed as part of Contract Agreement. As stated earlier, in Clause 13 of the Letter of Acceptance, all matters related to the Contract, the jurisdiction would be the Courts at Nagpur, Maharashtra.

5. Clause 20.6 of the General Conditions of the Contract contains the arbitration clause. Clause 20.6(a) of the deals with foreign contractors which



is not the case in the present matter. Clause 20.6(b) deals with domestic contractors and prescribes that if the Contract is with domestic contractors, arbitration with proceedings conducted will be in accordance with the laws of the Employer's country. Clauses 20.6(a) and 20.6(b) read as under:

“20.6 Arbitration

Any dispute between the Parties arising out of or in connection with the Contract not settled amicably in accordance with Sub-Clause 20.5 above and in respect of which the DB's decision (if any) has not become final and binding shall be finally settled by arbitration. Arbitration shall be conducted as follows:

(a) if the contract is with foreign contractors,

(i) for contracts financed by all participating Banks except under sub-paragraph (a) (2) below: international arbitration (1) with proceedings administered by the arbitration institution designated in the Contract Data, and conducted under the rules of arbitration of such institution; or, if so specified in the Contract Data, (2) international arbitration in accordance with the arbitration rules of the United Nations Commission on International Trade Law (UNCITRAL); or (3) if neither an arbitration institution nor UNCITRAL arbitration rules are specified in the Contract Data, with proceedings administered by the International Chamber of Commerce (ICC) and conducted under the ICC Rules of Arbitration; by one or more arbitrators appointed in accordance with said arbitration rules

(b) if the Contract is with domestic contractors, arbitration with proceedings conducted in



accordance with the laws of the Employer's country.

The place of arbitration shall be the neutral location specified in the Contract Data; and the arbitration shall be conducted in the language for communications defined in Sub-Clause 1.4 [Law and Language].

The arbitrators shall have full power to open up, review and revise any certificate, determination, instruction, opinion or valuation of the Engineer, and any decision of the DB, relevant to the dispute. Nothing shall disqualify representatives of the Parties and the Engineer from being called as a witness and giving evidence before the arbitrators on any matter whatsoever relevant to the dispute.

Neither Party shall be limited in the proceedings before the arbitrators to the evidence or arguments previously put before the DB to obtain its decision, or to the reasons for dissatisfaction given in its Notice of Dissatisfaction. Any decision of the DB shall be admissible in evidence in the arbitration.

Arbitration may be commenced prior to or after completion of the Works. The obligations of the Parties, the Engineer and the DB shall not be altered by reason of any arbitration being conducted during the progress of the Works.”

6. There is also a particular condition of the contract which is Clause 57 which is annexure – A of the General Conditions of the contract. The said Clause 57 stipulates rules of arbitration which reads as under:

57	Rules of arbitration	20.6(a)	The arbitration rules are "International Chamber of
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			<i>Commerce (ICC)" for foreign contractors and place of arbitration is Dubai or Delhi. For domestic contractors (Companies registered in India), Rules of Arbitration are accordance with the Arbitration and Conciliation Act 1996</i>
		20.6(b)	<i>Place of Arbitration: Delhi</i>

7. A perusal of the above stipulates that if the arbitration rules are the International Chamber of Commerce (ICC) for foreign contractors in that case the place of arbitration would be at Dubai or Delhi whereas, for the domestic contractors, the rules of Arbitration shall be in accordance with the Arbitration and Conciliation Act, 1996.

8. A combination of all the above three clauses indicates that under the General Conditions of Contract there is a specific clause wherein the parties have agreed to exclude all other places other than the place of Nagpur.

9. In view of the above, this Court is of the opinion that this Court would not have the jurisdiction to entertain the present petition.

10. The petition is dismissed, along with pending application(s), if any.

11. Liberty is granted to the Petitioner to approach the High Court of Bombay at Nagpur Bench for appointment of an Arbitrator.

SUBRAMONIUM PRASAD, J

DECEMBER 12, 2024

S. Zakir