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IN THE HIGH COURT OF DELHI AT NEW DELHI

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ARB.P. 290/2022

M/S ISHVAKOO INDIA PVT. LTD.

..... Petitioner

Through: Mr. Prashant Chandra, Adv.

versus

M/S CHAMBAL FERTILIZERS AND CHEMICALS LTD.

..... Respondent

Through: Mr. Aarsheya Sharda, Adv.

CORAM:

HON'BLE MR. JUSTICE JASMEET SINGH

ORDER

06.02.2024

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1. This is a petition under section 11(6) of the Arbitration and Conciliation Act, 1996 seeking appointment of an Arbitrator to adjudicate the disputes between the parties.
2. The petitioner was awarded a Letter of Intent (LOI) dated 27.01.2017 for Work Orders bearing No. *CFCL/PUR/260/49002325* for strengthening construction of boundary wall of the factory of the respondent.
3. The Arbitration Clause is contained in Clause 7 which reads as under:-

“7. SETTLEMENT OF DISPUTE & ARBITRATION

If any dispute or difference of any kind whatsoever shall arise between Employer and Contractor in connection with or arising out of the Contract including without prejudice to the generality of the foregoing any question regarding its existence, validity or termination or the execution of the Works, whether during the progress of the works or after their completion and whether before or after the



termination, abandonment or breach of the Contract, the parties shall seek to resolve any such dispute or difference by mutual consultation. If the parties fail to solve such dispute or difference by mutual consultation, the dispute or difference shall be referred to and finally settled by arbitration in accordance with Indian Arbitration & Reconciliation Act, 1996 or any statutory modification or enactment thereof for the time being in force., by one or more arbitrators (not to exceed three) who shall be appointed under such rules. The award of the arbitrator(s) shall be final and binding on the parties and not subject to any appeal and shall deal with the question of costs of arbitration and all matters related thereto and shall exclude a right of application or appeal to any court in connection with any question of law or fact arising in the course of the arbitration or with respect to any award made. Judgment upon the award rendered may be entered in any court having jurisdiction or application may be made to such court for a judicial recognition of the award or an order of enforcement, as the case may be. The place of the arbitration shall be New Delhi, India and the language of the arbitration shall be English. Notwithstanding any reference to the Arbitration herein, the parties shall continue to perform their respective obligations under the Contract unless they otherwise agree.”

4. Mr. Sharda, learned counsel for the respondent states that Clause 7 is to be read in conjunction with Clause 6 which reads as under:-

“6. GOVERNING LAW



The Contract shall be governed by and interpreted in accordance with laws of India and is subject to the jurisdiction of Courts at Kota (Rajasthan)."

5. He further states that in view of Section 16 to 20 CPC; the present petition should have been filed at Kota (Rajasthan).

6. I am unable to agree with this contention.

7. The Hon'ble Supreme Court in "**BGS SGS SOMA JV v. NHPC**" [(2020) 4 SCC 234] has crystallised the said issues. Para 82 reads as under.

"82. On a conspectus of the aforesaid judgments, it may be concluded that whenever there is the designation of a place of arbitration in an arbitration clause as being the "venue" of the arbitration proceedings, the expression "arbitration proceedings" would make it clear that the "venue" is really the "seat" of the arbitral proceedings, as the aforesaid expression does not include just one or more individual or particular hearing, but the arbitration proceedings as a whole, including the making of an award at that place. This language has to be contrasted with language such as "tribunals are to meet or have witnesses, experts or the parties" where only hearings are to take place in the "venue", which may lead to the conclusion, other things being equal, that the venue so stated is not the "seat" of arbitral proceedings, but only a convenient place of meeting. Further, the fact that the arbitral proceedings "shall be held" at a particular venue would also indicate that the parties intended to anchor arbitral proceedings to a particular place, signifying thereby, that that



place is the seat of the arbitral proceedings. This, coupled with there being no other significant contrary indicia that the stated venue is merely a “venue” and not the “seat” of the arbitral proceedings, would then conclusively show that such a clause designates a “seat” of the arbitral proceedings. In an international context, if a supranational body of rules is to govern the arbitration, this would further be an indicia that “the venue”, so stated, would be the seat of the arbitral proceedings. In a national context, this would be replaced by the Arbitration Act, 1996 as applying to the “stated venue”, which then becomes the “seat” for the purposes of arbitration.”

8. Relying on the judgment above, it is clear that once the venue of arbitration has been stated to be Delhi, this court will have jurisdiction to entertain the Section 11 petition.

9. For the said reasons, the petition is allowed. Since the parties are still having disputes between them, the following directions are issued:-

i) Mr. J.R. Aryan, (Retd. District & Sessions Judge) (Mob.: 9958697034) is appointed as a Sole Arbitrator to adjudicate the disputes between the parties.

ii) 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 the Fourth Schedule of the Arbitration &



Conciliation Act, 1996.

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

iv) 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.

v) The parties shall approach the learned Arbitrator within two weeks from today.

10. The petition is allowed and disposed of in the aforesaid terms.

JASMEET SINGH, J

FEBRUARY 6, 2024/NG

Click here to check corrigendum, if any