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

+ ARB.P. 314/2024 & I.A. 4989/2024

RAM KRIPAL SINGH
CONSTRUCTION PVT. LTD.

.....Petitioner

Through: Mr. Amit Pawan, Mr. Hassan
Zubair Waris & Ms. Shivangi,
Advocates.

versus

ENGINEERING PROJECT (INDIA) LIMITEDRespondent

Through: Mr. Badar Mahmood, Mr. Ammar,
Mr. Nitin Chawla, Mr. Bhishu N.
Jha, Mr. Pankajram R. Sharma,
Mr. Raman Goyal & Mr. B.K.
Tripathi, Advocates.

CORAM:

HON'BLE MR. JUSTICE PRATEEK JALAN

ORDER

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26.07.2024

1. By way of this petition under Section 11 of the Arbitration and Conciliation Act, 1996 ["the Act"], the petitioner seeks appointment of an arbitrator to adjudicate disputes between the parties under an agreement dated 13.02.2007, entitled "Pre-Tender Tie-Up Agreement" ["the Agreement"]. Under the Agreement, the parties agreed to bid for a project tendered by Oil Industry Development Board.

2. The Agreement between the parties herein provides for resolution of disputes by arbitration of the Chairman and Managing Director ["CMD"] of the respondent, or a person nominated by the CMD [Clause 42]. The Courts in Delhi/New Delhi were vested with exclusive jurisdiction under Clause 44 of the Agreement.

3. Disputes having arisen between the parties, the petitioner first



issued a notice invoking the arbitration clause on 31.08.2017. To this the respondent replied on 21.09.2017 and 27.09.2017, contending that pre-arbitration conciliation was mandatory under the Agreement. It requested the petitioner to withdraw the letter dated 31.08.2017, and give consent towards amicable settlement of the disputes. The petitioner, by a letter dated 27.09.2017, consented to amicable settlement.

4. Several further communications have been placed on record by the parties, including a letter dated 05.10.2017, by which the respondent kept the appointment of a conciliator in abeyance to enable the parties to settle the issues jointly. Amongst the letters which have been placed on record is the letter of the respondent dated 11.05.2021, which states that the respondent has examined the matter and an amount of ₹23,19,559/- is payable to the petitioner as per the respondent's own books of accounts. The petitioner did not accept this figure and continued to request further negotiations. The respondent's representative, by an email dated 21.03.2022, stated that further dates for discussion would be fixed. Discussions were held thereafter, but attempts at mutual settlement were ultimately unsuccessful.

5. This led to the arbitration clause being invoked by the petitioner again by letter dated 06.01.2023. The respondent replied on 30.01.2023, denying the existence of any disputes and stating that it is ready to clear the petitioner's pending dues of ₹23,19,559/-. The respondent also contended that the petitioner's claims are barred by limitation. As the parties have been unable to achieve consensus on the appointment of the arbitrator, the petitioner has approached this Court under Section 11 of the Act.



6. The respondent has filed a reply and is represented by Mr. Badar Mahmood, learned counsel. Mr. Mahmood submits that the present petition is barred by limitation, as are the underlying claims sought to be asserted by the petitioner.

7. The scope of the court's jurisdiction in an application under Section 11 of the Act has been considered in the recent judgment of the Supreme Court in *SBI General Insurance Co. Ltd. V. Krish Spinning* [Civil Appeal Nos. 7821-82/2024, decided on 18.07.2024]. The Court has referred to the earlier authorities on the point, including *Vidya Drolia and Others vs. Durga Trading Corporation* [(2021) 2 SCC 1], *Bharat Sanchar Nigam Limited and Anr. vs. Nortel Networks India Private Limited* [(2021) 5 SCC 738], *NTPC Ltd. v. SPML Infra Ltd.* [(2023) 9 SCC 385] and *M/s Arif Azim Co. Ltd. V. M/s Aptech Ltd.* [Arb. P. 29/2023, decided on 01.03.2024], but come to the conclusion that the position of law, as it now stands, is explained by the seven Judge Bench in *Interplay Between Arbitration Agreements under A&C Act, 1996 & Stamp Act, 1899, In re* [(2024) 6 SCC 1]. In this context, the Court has clarified that the question of arbitrability, including limitation, must be left to the arbitral tribunal. The only jurisdiction of the referral Court is to determine the existence of an arbitration agreement, that too on a *prima facie* basis.

8. Having regard to the aforesaid judgments, I am of the view that the appropriate course is to refer the parties to arbitration, leaving all rights and contentions, including on the question of limitation, open for consideration by the learned arbitrator.

9. The petition is, therefore, allowed and the disputes under the



Agreement dated 13.02.2007 are referred to the arbitration of Hon'ble Ms. Justice Indira Banerjee, former Judge, Supreme Court of India [Tel: 9560808777]. The learned Arbitrator is requested to furnish a declaration under Section 12 of the Act, prior to entering upon the reference.

10. The arbitration proceedings will be held under the aegis of Delhi International Arbitration Centre, Delhi High Court, Shershah Road, New Delhi ["DIAC"], and the arbitration proceedings will be governed by the Rules of DIAC, including as to remuneration of the learned Arbitrator.

11. All rights and contentions of the parties are left open for adjudication by the learned Arbitrator.

12. The petition stands disposed of accordingly. All pending application also stands disposed of.

PRATEEK JALAN, J

JULY 26, 2024/'pv'/