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

+ ARB.P. 378/2024

M/S SMAT FORMS

..... Petitioner

Through: Mr. Durgesh Gupta, Advocate.

versus

DELHI BUREAU TEXT OFBOOK & ANR. Respondents

Through: Mr. Tushar Sannu, Mr. Nihar
Ranjan Singh, Advocate with Mr.
Arvind Kumar Arora, Officer for
DJB.

CORAM:

HON'BLE MR. JUSTICE PRATEEK JALAN

ORDER

% **18.03.2024**

I.A. 6231/2024 (for exemption)

Exemption allowed, subject to all just exceptions.

The application stands disposed of.

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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 a work order dated 03.11.2020. The work order was awarded pursuant to a tender, bearing No. F.1-P(2)/Workbooks/DBTB/19-20/10. The general terms and conditions of the tender includes a disputes resolution clause which provides for adjudication by a Sole Arbitrator appointed by the Chairman of the respondent. Clause 46 of the general terms and conditions of the



tender, vests exclusive jurisdiction in the Courts at Delhi/New Delhi.

2. Disputes having arisen between the parties, the petitioner invoked the arbitration clause, by a communication dated 20.09.2023, to which no reply was received.

3. Mr. Durgesh Gupta, learned counsel for the petitioner, submits that the clause providing for appointment of the arbitrator by the Chairman of the respondent unilaterally, is impermissible in view of the judgments of the Supreme Court in *TRF Limited vs. Energo Engineering Projects Limited* [(2017) 8 SCC 377] and *Perkins Eastman Architects DPC & Anr. vs. HSCC (India) Limited* [(2020) 20 SCC 760], and other judgments which follow them. He, therefore, seeks appointment of an independent arbitrator.

4. Mr. Tushar Sannu, learned counsel, appears on advance notice on behalf of the respondent and states that the notice dated 20.09.2023 was replied on behalf of the respondent, by a letter dated 16.10.2023. However, he submits that the respondent has no objection to the appointment of an arbitrator, leaving all rights and contentions of the respondent on merits open for adjudication by the arbitrator.

5. Having regard to the above, and with the consent of learned counsel for the parties, the disputes between the parties under the work order dated 03.11.2020, read with the tender bearing No. F.1-P(2)/Workbooks/DBTB/19-20/10, are referred to arbitration under the aegis of Delhi International Arbitration Centre, Delhi High Court, Shershah Road, New Delhi-110503 [“DIAC”]. DIAC is requested to nominate an arbitrator from its panel. The arbitration proceedings will be governed by the rules of DIAC, including as to remuneration of the



learned Arbitrator.

6. The learned Arbitrator is requested to furnish a declaration under Section 12 of the Act, prior to entering upon the reference.

7. It is made clear that all rights and contentions of the parties on maintainability of the claims and on merits, are left open for adjudication by the learned Arbitrator.

8. The petition is disposed of in the aforesaid terms.

PRATEEK JALAN, J

MARCH 18, 2024

“Bhupi”/