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

**Date of Decision: 28<sup>th</sup> March 2024**

+ O.M.P. (COMM) 138/2024 & I.A. 7085/2024, I.A. 7086/2024  
MANPOWER GROUP SERVICES INDIA PRIVATE LIMITED

..... Petitioner

Through: Mr. Neil Hildreth, Mr. Rahul Jain and  
Mr. Kshitiz Arya, Advocates.

versus

SKILLSTECH SERVICES PRIVATE LIMITED ..... Respondent

Through: Mr. Zafar Khurshid and Ms.  
Tejaswini Chandrasekhar, Advocates.

**HON'BLE MR. JUSTICE ANUP JAIRAM BHAMBHANI**

**J U D G M E N T**

**ANUP JAIRAM BHAMBHANI J.**

By way of the present petition filed under section 34 of the Arbitration & Conciliation Act 1996 ('A&C Act'), the petitioner (non-claimant in the arbitral proceedings) impugns interim award dated 09.02.2024 passed by the learned Sole Arbitrator, deciding a preliminary issue framed in the matter. A signed copy of the award is stated to have been received by the petitioner on 23.02.2024.

2. Briefly, disputes between the parties have arisen from 04 separate documents, namely (i) Memorandum of Understanding dated 16.12.2016 ('MoU'); (ii) Addendum to MoU dated 01.03.2018 ('Addendum'); (iii) Deed of Revised & Additional Terms dated 31.08.2018 ('Revised Terms'); and (iv) Program Management and Operations Agreement dated 07.09.2018 ('PMO Agreement').

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KAUSHIK

Signing Date: 18.04.2024  
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3. The disputes between the parties were referred to arbitration *vide* orders dated 09.07.2021 and 22.07.2021 passed in ARB.P. No.495/2021, and the matter has been pending before the learned Arbitrator ever since.
4. *Vide* order dated 05.08.2022, the learned Sole Arbitrator had *inter-alia* framed the following issue :

*“1. What is the scope of these Arbitration proceedings? Whether the Claimant can raise its claims under all the Agreements executed between the parties as alleged by the Claimant (i.e. MOU dated 16.12.2016. Addendum to the MOU dated 01.03.2018, Deed of Revised & Additional Terms dated 31.08.2018 & PMO Agreement dated 07.09.2018) (OPC) or whether the Claimant can raise claims only relating to the PMO Agreement dated 07.09.2018 as alleged by the Respondent? (OPR).”*

5. It is the above issue that the learned Arbitrator has decided by way of the impugned order. Since, the referral order dated 09.07.2021 did not contain any specific discussion as to the 04 documents from which the disputes have arisen, upon considering the contentions of the parties, the learned Arbitrator has proceeded to record as follows :

*“8. On careful consideration of the contentions raised by both the parties, this Tribunal is of the view that the Hon’ble High Court has referred all the disputes between the parties under the four documents. Although the Arbitration clause is contained only in the PMO dated 07th September, 2018 but the intention of the parties from PMO is clear that the parties intended to arbitrate and therefore, the claims of the Claimant under all the four documents are maintainable. However, in view of the judgment of the Supreme Court in *Duro Felgura, S.A (Supra)* and of Delhi High Court in *Delhi Transport Infrastructure Development Corporation Ltd. (Supra)*, the Claimant has to file a separate claim under each document. In that view of the matter, the disputes between the parties under all the four documents can be adjudicated by this*



*Tribunal but one Statement of Claim filed by the Claimant is not maintainable. Issue No.1 is decided in the above terms.”*

(emphasis supplied)

6. As a sequitur to the above, the learned Arbitrator has directed as follows :

*“9. The Claimant is directed to file a separate Statement of Claim in respect each of the four documents within a period of three weeks. The Statement of Defence to the Statement of Claims be filed within three weeks thereafter. Rejoinder within three weeks thereafter.”*

7. The court has heard Mr. Neil Hildreth, learned counsel appearing for the petitioner and Mr. Zafar Khurshid, learned counsel appearing for the respondent at the stage of issuance of notice on the present petition.
8. Mr. Hildreth argues, that by deciding issue No.1 as a preliminary issue, the learned Arbitrator has *decided the arbitrability* of the disputes that have arisen from the four separate documents.
9. Mr. Hildreth submits, that reference of disputes was made to the learned Arbitrator *only* in respect of disputes that have arisen from the PMO Agreement and not from the other three documents.
10. Furthermore, Mr. Hildreth explains, that the petitioner’s grievance is that the learned Arbitrator has decided the issue at a belated stage when pleadings between the parties were complete; evidence had been led; and the matter was at the stage of final arguments.
11. Finally, it is argued that by permitting the claimant (respondent before this court) to now file a *fresh statement of claim*, the learned



Arbitrator has granted to the claimant an opportunity to 're-work' their entire case in the arbitral proceedings.

12. On the other hand, Mr. Zafar Khurshid, learned counsel for respondent submits, that as recorded in order dated 27.11.2023, the issue was taken-up to be decided as a preliminary issue at the request and instance of counsel for both sides. Counsel points-out, it is so recorded in order dated 27.11.2023 in so many words :

*“2. Ld. Counsels for both the parties submit that Issue No. 1 goes to the root of the matter and therefore, be treated as a preliminary issue and should be decided first by an interim award before taking up the other issues.”*

13. Mr. Khurshid argues, that if anything, the petitioner would now have an opportunity of *responding separately* to all claims arising under the four separate documents, with all his objections in relation to arbitrability as well as on the merits of the disputes, by way of four separate statements of defence.
14. Mr. Khurshid however clarifies, that since it is the respondent's case that they have no separate claims arising from Deed of Revised & Additional Terms dated 31.08.2018, they have filed a statement of claim in relation to the disputes arising from MoU dated 16.12.2016 and Addendum to MoU dated 01.03.2018; and a separate statement of claim arising from PMO Agreement dated 07.09.2018.
15. Mr. Khurshid further points-out, that as has been stated in para-8 of the impugned order, the learned Arbitrator has only observed that the claims arising from the four documents are not maintainable by way of single statement of claim; and consequentially, the learned



Arbitrator has directed the respondent to file four separate statements of claims.

16. Counsel accordingly argues, that the submission made on behalf of the petitioner that the learned Arbitrator has decided on the arbitrability of the claims is mis-placed and mis-conceived.
17. Mr. Khurshid also points-out, that the learned Arbitrator has made it clear that the documents which were already on record in the arbitral proceedings, need not be re-filed, while at the same time granting to the parties liberty to file any additional documents, if they so wish.
18. In the circumstances, it is argued by Mr. Khurshid, that no prejudice has been caused to the petitioner by the impugned order.
19. Upon a conspectus of the averments in the petition and upon a careful reading of the impugned order, in the opinion of this court, the following inferences arise :
  - 19.1. Issue No.1 has been decided as a preliminary issue, since in the reckoning of the parties themselves, the said issue goes to the root of the matter. This has been specifically recorded in order dated 27.11.2023 passed by the learned Sole Arbitrator.
  - 19.2. It is clear from a perusal of the orders, that all disputes between the parties stand referred to arbitration by way of orders dated 09.07.2021 and 22.07.2021 made in ARB.P 495/2021.
  - 19.3. By way of the impugned order, the learned Arbitrator has concluded that the respondent (claimant in the arbitral proceedings) would be required to file 04 separate statements of claim in view of the settled position of law, as held *inter-alia* in



***Duro Felguero S.A. vs. Gangavaram Port Ltd.<sup>1</sup>, and Delhi Transport Infrastructure Development Corporation Limited vs. AOM Advertising Pvt. Ltd.<sup>2</sup>***

- 19.4. Having afforded to the respondent (claimant) the opportunity of filing separate statements of claim, the learned Sole Arbitrator has, at the same time, also permitted the petitioner (non-claimant) to file separate statements of defence, thereby leaving it open to the petitioner to take all objections and raise all issues, as they may chose to, in accordance with law.
- 19.5. Most importantly, nowhere in the impugned order has the learned Arbitrator dealt with the merits of the disputes between the parties. In fact, a plain reading of the impugned order would show, that there is no reference at all to the merits of the disputes, which would obviously be decided in due course during in the arbitral proceedings.
- 19.6. If any doubt was to remain in regard thereto, this court clarifies that all rights and contentions of the parties, *including as to arbitrability* of the disputes arising from the four documents referred to in para 2 above, and in relation to all claims or counter-claims, shall remain open, to be decided by the learned Arbitrator during the course of the arbitral proceedings, in accordance with law.
20. In view of the above, the court finds no merit in the challenge preferred by way of the present petition.

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<sup>1</sup> (2017) 9 SCC 729

<sup>2</sup> 2021 SCC OnLine Del 5300



21. The petition is accordingly dismissed; without however any order as to costs.
22. Pending applications, if any, also disposed-of.

**ANUP JAIRAM BHAMBHANI, J**

**MARCH 28, 2024**  
*V.Rawat*