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

+ **ARB.P. 466/2024**

INDUS PROJECTS LIMITED

.....Petitioner

Through: Mr. Udit Seth, Mr. Divyanshu, Advs.
versus

BRAHMAPUTRA CRACKER AND POLYMER LTD ...Respondent

Through: Ms. Chaudhary, Adv. for Ms.
Madhumita, Adv.

CORAM:

HON'BLE MR. JUSTICE JASMEET SINGH

ORDER

23.10.2024

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1. This is petition filed under Section 11(6) of the Arbitration and Conciliation Act, 1996, seeking appointment of an Arbitrator.
2. The brief facts are that the respondent floated a tender for construction of “Additional Butene-I Spheres for Brahmaputra Petrochemical Complex, Lepetaka, Assam.”
3. The petitioner’s bid was successful and the petitioner was awarded Fax of Acceptance (FOA) dated 02.02.2013.
4. The petitioner on several occasions requested the respondent to release the payment/reimbursement of the petitioner’s invoices for outstanding amount/dues of Cenvatable service tax.
5. The arbitration clause is clause 107 of GCC and reads as under:

“107. Arbitration

107.1 Unless otherwise specified, the matters where decision of the Engineer-in-charge is deemed to be final and binding as provided in the Agreement and the issues / disputes which cannot be mutually



resolved within a reasonable time, all disputes shall be referred to arbitration by Sole Arbitrator.

The Employer[GAIL (india) Ltd.] shall suggest a panel of three independent and distinguished persons to the bidder/ contractor/ supplier/ buyer (as the case may be) to select any one among them to act as the Sole Arbitrator.

In the event of failure of the other parties to select the Sole Arbitrator within 30 days from the receipt of the communication suggesting the panel of arbitrators, the right of selection of the sole arbitrator by the other party shall stand forfeited and the EMPLOYER (GAIL) shall have discretion to proceed with the appointment of the Sole Arbitrator. The decision of Employer on the appointment of the Sole Arbitrator shall be final and binding of the parties.

The award of Sole Arbitrator shall be final and binding on the parties and unless directed / awarded otherwise by the Sole Arbitrator; the cost of the Arbitration proceedings shall be shared equally by the parties. The Arbitration proceedings shall be in english language and venue shall be New Delhi, India.

Subject to the above, the provisions of (India) Arbitration & conciliation act 1996 and the rules framed thereunder shall be applicable. All matters relating to this contract are subject to the exclusive jurisdiction of the courts situated in the State of Delhi.

Bidder/Suppliers/ CONtractors may please note that the arbitration and conciliation act 1996 was enacted by the Indian Parliament and is based on United Nation Commission of International Trade Law (UNCITRAL Model Law), which were prepared after extensive

consultation with arbitral institutions and centres of International Commercial Arbitration. The United Nations general assembly vide resolution 31/98 adopted the UNCITRAL arbitration rules on 15 December 1976."

6. Since they were not paid, the petitioner invoked arbitration *vide* legal notice dated 02.03.2023. Thereafter, the present petition has been filed.



7. Since the letter of invocation dated 02.03.2023 was not on record, Mr. Seth, learned counsel for the petitioner has handed over a copy of the same, which is taken on record.

8. The respondents have filed a reply but the reply was not on record. A copy has been handed over in Court today, which is taken on record.

9. Ms. Chaudhary, learned counsel for the respondent, on instructions, admits that all the defences raised in the reply are on factual matrix and in case all the contentions are kept open, she is agreeable to appointment of the Arbitrator.

10. For the said reasons, the petition is allowed and the following directions are issued:-

- i) Mr. Justice Ajay Kumar Mittal, Chief Justice of High Court of Madhya Pradesh (Retd.) (Mob. No. 970008112) 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').
- iii) The remuneration of the learned Arbitrator shall be in terms of DIAC (Administrative Cost and Arbitrators' Fees) Rules, 2018.
- iv) The learned Arbitrator is requested to furnish a declaration in terms of Section 12 of the Act prior to entering into the reference.
- v) 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/counter-claims and merits of the dispute of either of the parties, are left open for adjudication by the learned arbitrator.

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

JASMEET SINGH, J

OCTOBER 23, 2024 / (MS)/(SP)

Click here to check corrigendum, if any