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IN THE HIGH COURT OF DELHI AT NEW DELHI***RESERVED ON –09.01.2024***

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PRONOUNCED ON – 29.01. 2024

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ARB.P. 546/2023**RAILTECH INFRAVENTURE PVT. LTD.****..... Petitioner**Through: Mr. Anshul Goel, Mr. Ranjeev
Kumar, Advs.

versus

RAIL LAND DEVELOPMENT AUTHORITY**..... Respondent**Through: Mr. R.V. Sinha, Mr. A.S. Singh, Ms.
Nidhi Singh, Advs.

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CORAM:**HON'BLE MR. JUSTICE DINESH KUMAR SHARMA****J U D G M E N T****DINESH KUMAR SHARMA, J.**

1. The present petition has been filed under Section 11(6) of the Arbitration and Conciliation Act (hereinafter referred to as the “A&C Act”), 1996 for the appointment of a sole arbitrator.
2. Briefly stated the facts of the case are that the petitioner in response to a tender floated by the respondent for Lease for Residential Development on Railway land in Gata No.26 at Jhusi Land Plot, Prayagraj under Varanasi Division, deposited bid security of Rs.1 crore along with its bid as per terms of the Bid documents. Subsequently, the bid of the petitioner was accepted by the respondent and a Letter of Acceptance (hereinafter referred to as



“LOA”) dated 29.07.2022 was issued. The respondent informed the petitioner that the petitioner company’s eligibility proposal and financial proposal opened on 17.06.2022 and 29.07.2022 respectively and the same has been accepted at the offered value of Rs.79,40,00,001/- (Rupees Seventy Nine Crore Forty Lakh and One Only) towards Lease Premium with respect to the land for “Grant for Residential Development on Railway Land approx. area 70606 sq. mtr at Jhusi Land Plot, Prayagraj under Varanasi Division of NER (U.P.) for 99 years. The respondent vide LOA dated 29.07.2022 also demanded Rs.15,88,00,000/- (Rupees Fifteen crores Eighty-Eight lakhs only) towards the payment of the first installment of lease premium within 60 days from the date from which the LOA was issued. Furthermore, the petitioner vide letter dated 29.07.2022 was also asked to fulfill the conditions as per Clause 26.0 of Part-I (Regulations for Bids and Lease Agreement) along with Clause 12 of Part III (Instruction to Bidders and Bid forms) of the Bid documents leading to the execution of the Lease Agreement with Rail Development Authority (hereinafter referred to as “RLDA”) and all other conditions of the Bid document referred above. The letter issued by the Respondent also stated, that till such time the Lease Agreement is executed between RLDA and the Special Purpose Company (SPC) created by the petitioner, this Letter of Acceptance dated 29.07.2022 shall constitute a binding contract. The LOA also stated that the same shall be read in conjunction with the Bid document and all the terms and conditions of the Bid document will be binding on the petitioner and furthermore, in case of any conflict between the LOA and the Bid document, the Bid document shall prevail over the LOA. The petitioner also paid a sum



of Rs.11,01,825/- towards the first installment of the success fee to the respondent.

2. Learned counsel for the petitioner submitted that the Bid documents as per Regulations for Bids and Lease Agreement (Part I) shall mean and include the following documents collectively:

- i. Part-I, Regulations for Bids and Lease Agreements (the "Regulations").
- ii. Part-II, General Conditions of Lease Agreement and Annexures (the "GCLA");
- iii. Part-III, Instructions to Bidders and Bid Forms (the "ITB");
- iv. Part-IV, Special Conditions of Lease Agreement (the "SCLA");
- v. Part-V, Schedule and Specifications;
- vi. Additional drawings and instructions, if any.

3. Learned counsel for the petitioner further submits that as per Clause 1.1.1 of GCLA, "Agreement" shall mean jointly the Lease Agreement (Recital), the General Conditions of the Lease Agreement (hereinafter referred to as "GCLA"), the Special Conditions of Lease Agreement (hereinafter referred to as "SCLA") and the Schedules and Appendices thereto. It was further submitted that the Bid documents i.e. General Conditions of Lease Agreement (GCLA), Special Conditions of Lease Agreement (SCLA), and Schedules and Appendices thereto are also part of the agreement between the petitioner and the respondent.



4. Learned counsel for the petitioner further submitted that as per clause 1.2.15 of GCLA, the agreements and all other bid documents forming part of or referred to in the agreement are to be taken as mutually explanatory and unless otherwise expressly provided elsewhere in the Agreement, the priority of the Agreement and other Bid Documents forming part hereof or referred to herein shall, in the event of any conflict between them, be in the following order:-

- a) Recital of the Lease Agreement;
- b) Correspondence between the Parties after issuance of LOA, attached to the Agreement;
- c) Letter of Acceptance (LOA) issued to the Selected Bidder;
- d) Part-IV, Special Conditions of Lease Agreement;
- e) Part-II, General Conditions of Lease Agreement and Annexures thereof (including correction slips issued up to date);
- f) Schedules forming part of the Agreement;
- g) Part-III, Instructions to Bidder and Bid Form-1 to 16;
- h) Part-V, Schedules and Specifications, if any;
- i) Part-I, Regulations for Bids and Lease Agreements, (including correction slips issued up to date);

5. Learned counsel for the petitioner further submits that though the priority of agreements and/or schedules and specifications as mentioned in the GCLA has to be in the order as per point No. 12 of LOA dated 29.07.2022, therefore, in case of any conflict between LOA and Bid



document, the Bid document shall prevail over LOA. Thus the Respondent changed the priority of the documents vide LOA dated 29/07/2022. Therefore, the priority of the above-said documents are following after LOA dated 29.07.2022:

- (a) Part-IV, Special Conditions of Lease Agreement;
- (b) Part-II, General Conditions of Lease Agreement and Annexures thereof (including correction slips issued up to date);
- (c) Schedules forming part of the Agreement;
- (d) Part-III, Instructions to Bidder and Bid Form-I to 16;
- (e) Part-V, Schedules and Specifications, if any;
- (f) Part-I, Regulations for Bids and Lease Agreements, (including correction slips issued up to date);
- (g) LOA dated 29/07/2022

6. Learned counsel for the petitioner submitted that after receiving the LOA dated 29.07.2022, the petitioner's officials visited the site along with the officials of the respondent and found that the site suffers from various encroachments by third parties at a number of locations. It was further stated that as per Article 7.2.7 of the GCLA of Bid document it was clearly mentioned that to the best of RLDA's knowledge and belief, the site is free from all encumbrances and is available for Development in accordance with the terms of the Agreement. It was further submitted that in Clause 1.1.3 of the ITB of Bid document, it is mentioned that the site is a clear piece of land with a clear boundary and no encroachments. Thus, the petitioner submitted the bid under the *bona fide* impression that the site is a clear piece of land with earmarked boundaries and the site is vacant without any encroachment.



7. Learned counsel for the petitioner has further submitted that therefore, it was a contractual obligation on the respondent's part to make the site free from all encroachments with earmarked boundaries prior to demanding the first installment of the lease premium from the petitioner.

8. Learned counsel for the petitioner submitted that the respondent itself wrote a letter dated 22.08.2022 to the District Magistrate, Prayagraj, Uttar Pradesh informing that the encroachments have been done on the site on which permanent structures have been erected by various persons and that according to Sajra Sheet, there is no demarcation of the said land and as such requested from the District Magistrate to nominate any official to demarcate the said land. It was further submitted by the learned counsel for the petitioner that the encroachments on the site have not been demolished till date nor the demarcation of the said land has been done as requested to the District Magistrate. It was further submitted that the Respondent had accepted the Bid of the Petitioner company to grant lease rights in the land for 99 years and gave the right to the Petitioner company to sub-lease the residential apartments which will be constructed on the said land up to the period of 99 years and as such all the provisions of Uttar Pradesh Apartment (Promotion Of Construction, Ownership, And Maintenance) Act, 2010, The Uttar Pradesh Apartment (Promotion of Construction, Ownership, and Maintenance) Rules, 2011, The Real Estate (Regulation And Development) Act, 2016, The Uttar Pradesh Real Estate (Regulation and Development) Rules, 2016 have to be complied by the Petitioner.

9. Learned counsel for the petitioner further submitted that as per Clause 17 of SCLA of Bid document, an obligation was put on the Petitioner



company to sub-lease only the Built Up space which will be constructed on the site leased to the Petitioner company without undivided interest in the common areas and facilities which violates various provisions of the Uttar Pradesh Apartment (Promotion Of Construction, Ownership, And Maintenance) Act, 2010, The Uttar Pradesh Apartment (Promotion of Construction, Ownership and Maintenance) Rules, 2011, The Real Estate (Regulation And Development) Act, 2016, The Uttar Pradesh Real Estate (Regulation and Development) Rules, 2016. It was further submitted that a combined reading of Section 3 (i), Section 5, Section 7, and Section 10 of UP Apartments Act, 2010 stipulates that the Provisions of UP Apartment Act, 2010 shall apply to the present project if the Petitioner company will sub-lease the Apartments which shall be constructed on the said land and thus without transferring rights in undivided interest in the common areas and facilities by the Petitioner shall be a violation of above-said provisions and various other provisions of UP Apartment Act, 2010.

10. Learned counsel for the petitioner further submitted that a combined reading of Section 2(n), 11(4)(f) and 17(1) and (2) of the RERA Act stipulates that it is mandatory obligation on the part of the Petitioner to sub-lease the apartment which shall be constructed on the said land along with an undivided proportionate title in the common areas to which the Petitioner cannot be complied with in terms of Clause 17 of SCLA which restricts the Petitioner to sublease only the Built up area of the apartment. It was further submitted that as per provision 61 of the RERA Act if the Petitioner company shall violate any provision of the RERA Act it shall be liable to a penalty of ten thousand rupees for every for which this default continues



cumulatively extend to five percent of the cost of the plot, apartment or building as the case may be of the present project. Thus, any clause of the tender which may be violative of any provision of the RERA Act or which causes the Petitioner to violate any provision of the RERA Act is liable to be struck down and void *ab initio*. The petitioner aggrieved of this sent a letter dated 02.09.2022 to the respondent notifying that there are encroachments on the said lands and Article 17 of SCLA is against the provision of UP Apartment Act, 2010 and requested the respondent to confirm the actions taken by the respondent to clear encroachments along with supporting documents to confirm that the petitioner will be entitled to an undivided proportionate right in the common areas including the land and the aforesaid letter was followed by a reminder dated 19.09.2022.

11. Learned counsel for the Petitioner submitted that the respondent vide email dated 21.09.2022 reiterated the demand for the first installment of the lease premium and asserted that if the same is not paid within 60 days of issuance of the LOA, then interest will apply on the entire amount of the contract. The petitioner responded to the said email on the same date and demanded a response to its letter dated 02.09.2022 and reminder letter dated 19.09.2022. However, the respondent did not respond to the said letters sent by the Petitioner informing about the encroachments on the land. The petitioner submitted that in the circumstances the disputes have arisen between the parties as the site was not free from encroachments of third parties as represented in the Bid documents. It is further submitted that Clause 17 of the SCLA of Bid document is also required to be amended to bring it in consonance with the Uttar Pradesh Apartment (Promotion Of



Construction, Ownership, And Maintenance) Act, 2010, The Uttar Pradesh Apartment Promotion of Construction, Ownership, and Maintenance) Rules, 2011, The Real Estate (Regulation And Development) Act, 2016 and the Uttar Pradesh Real Estate (Regulation and Development) Rules, 2016.

12. The petitioner's plea is that amendment is required to the effect that the petitioner Company shall be given the right to sub-lease the apartments which will be constructed on the aforesaid land along with undivided interest in the common areas and facilities. It was stated that till the site is made free from encroachments and Clause 17 of SCLA is not amended the respondent cannot assert its demand for the first installment of lease premium. The petitioner stated the above-said disputes were raised and a request was also made to the respondent to set up a meeting for resolving the above-said disputes mutually in terms of Clause 23.1 of the GCLA of the Bid document. However, the respondent did not apprehend the same.

13. The petitioner therefore, apprehending that the respondent may be forfeiting the security deposit of rupees one crore also moved a petition under Section 9 of the Arbitration and Conciliation Act, bearing no. OMP (I)(COMM) 305/2022 before the Hon'ble High Court of Delhi.

14. Subsequently, the petitioner invoked the arbitration vide notice dated 13.12.2022 in terms of Clause 23.5.1 and 23.5.2 of the GCLA of the Bid document as amended by Articles 31.1 and 31.2 of the SCLA.



The respondent vide communication dated 05.01.2023 stated that the demand for arbitration is premature and the plea of the respondent taken in the notices regarding the invocation of arbitration was that as per agreed conditions only the lessee has a right to demand arbitration and the petitioner has not acquired the status of lessee in terms of Article 1.1.56 of GCLA, Part-II. It was also stated by the respondent that to acquire the status of lessee, it is obligatory to fulfill the requisite condition. However, since the petitioner has not deposited the first installment of the lease premium nor fulfilled the contractual obligation as required under Article 26.0 of Regulations for Bids and Lease Agreement Part I and Para 6 of LOA dated 29.07.2022, no agreement has been executed between the parties therefore, the demand for arbitration is legally unsustainable. The respondent filed a detailed reply and submitted that though the petitioner was a successful bidder and a letter of acceptance (LOA) dated 29.07.2022 was issued in his favor however, the petitioner failed and neglected to comply with the conditions mentioned therein. The respondent stated that there is no valid and enforceable agreement as the petitioner failed to fulfill the conditions in terms of Clause 26.0 of the Bid document. Clause 26.0 of the Execution of Lease Agreement provides as under:-

"Clause 26.0 Execution of Lease Agreement

The Bidder whose bid is accepted shall be required to appear in person at the office of the General Manager/Project, Joint General Manager/Project, Deputy General Manager/Project, or concerned



Nodal Officer, as the case may be, or if the Bidder is a firm or consortium, a duly authorized representative shall so appear and execute the Lease Agreement within 120 days of issue of the LOA by RLDA after fulfilling following conditions within 105 days:

- a) Acknowledgement of the Letter of Acceptance issued by RLDA within 7 (seven) days of its receipt by signing and returning its duplicate copy to RLDA.*
- b) Payment of the full amount, of Lease Premium or the First Instalment of the Lease Premium and Bank Guarantees for the remaining Instalments, if required, by the Selected Bidder, as specified in the Payment Schedule.*
- c) Submission of Performance Guarantee.*
- d) Incorporation of a Special Purpose Company (SPC) under the Companies Act 1956 with a minimum paid up capital as specified in the ITB within 90 (ninety) days from the date of issue of the LOA by RLDA.*
- e) Payment of the full amount of Success Fee by the Selected Bidder, if payable, to RLDA 's consultant for the Project/Site."*

15. Learned counsel for the respondent submits that the petitioner did not fulfill the terms and conditions and therefore, the LOA cannot be read as an agreement. The respondent referred to Clauses 7 to 12 of the letter of acceptance dated 29.07.2022 which are as reproduced under:



- “7. You are requested to fulfill the conditions as per **Clause 26.0** of Part-I (Regulations for Bids and Lease Agreement), along with **Clause-12** of Part-III (Instruction to Bidders and Bid Forms) of the Bid Documents leading to execution of Lease Agreement with Rail Land Development Authority (RLDA) and all other conditions of the Bid Document referred above.
8. Till such time the Lease Agreement is executed between RLDA and the Special Purpose Company (SPC) created by you (hereby referred to as the "Lessee"), this Letter of Acceptance (LOA) shall constitute a binding contract with you for fulfilling the requirement of execution of Lease Agreement.
9. As per Note-9 of Bid Form-12, RLDA, being an authority of the Union of India under Ministry of Railways, is part of the Government and deduction of income tax at source (TDS) would not be applicable on the payments to be made by the Selected Bidder/ Lessee to RLDA.
10. Any communication from your side containing any condition contrary with respect to agreed conditions either implied or otherwise would be treated as annulment of LOA and it will lead to forfeiture of Bid Security.
11. You shall comply with all the other requirements set out in the Bid Document referred above.
12. The LOA shall be read in conjunction with the Bid Document referred above. All terms and conditions of the Bid Document will be binding on you and in case of any conflict between LOA and Bid Document, the Bid Document shall prevail over LOA.”
16. Learned counsel for the respondent further submitted that the site was to be handed over to the petitioner after fulfilling the aforesaid conditions and signing of Lease Agreement as per the SCLA. However, as



the petitioner did not fulfill the aforesaid conditions, the handing over of the site did not take place. The respondent stated that since the petitioner did not perform its obligations, therefore the present petition is premature and is liable to be dismissed.

17. It is pertinent to mention that the respondent in his reply has also taken an objection to the non-stamping of the LOA dated 29.07.2022. However the same is not relevant. Now, in view of the judgment of the Supreme Court in ***Re: Interplay Between Arbitration Agreements Under The Arbitration And Conciliation Act 1996 and The Indian Stamp Act 1899*** 2023 INSC 1066. The respondent further submitted that though it is the commitment of the respondent that an encroachment-free site will be handed over to the petitioner but same is the latter obligation and before that the petitioner has to comply with its obligation laid down as per the SCLA. The respondent further submitted that since the petitioner failed to fulfill its obligation, the petitioner has no *locus standi* to agitate the dispute. The respondent reiterated that there is no encroachment on the said land except soft ones which is not going to cause any adverse effect on the project.

18. Learned counsel for the respondent further stated that before applying for the tender, it was the duty on the part of the petitioner that the petitioner has to make appropriate inquiries about the site to avoid any complications in the future. The respondent referred to the terms and conditions of the bid which includes 'Deemed Knowledge'. It was further submitted that the petitioner has raised the issue of encroachment which is not only incorrect but is also premature. It is further submitted that in fact,



Jhunsi is a vacant land entrusted by NE Railway to RLDA for commercial monetization and the area is huge with open boundaries. Still, there is no encroachment on the site except a soft one. Soft encroachments are removed from time to time till the site is handed over developer. The site can only be handed over to the developer once the agreement is executed. The submission of 1st installment is pre-required to execute the agreement. There is no change of status on the land since the bid for the same was invited. The bidder must have visited the site before bidding for the land. Learned counsel for the Respondent further submitted that before handing over the site, Joint demarcation of land with Revenue Authorities is also done to ensure that land handed over to the developer is free from any dispute. The exercise has already been started by this office and letter has already been written to the concerned authorities. It was further submitted that the first obligation has been cast upon the bidder to inspect the site before dropping the bid and if the site was full of encroachment then the petitioner ought to have not participated in the bidding process and submitted the bid.

19. Learned counsel for the respondent further submitted that since the petitioner failed to perform its obligations, therefore, the present petition is not sustainable. In respect of the amendment to Clause 17 of the SCLA, the respondent stated that the petitioner has not placed any document to show that the terms and conditions of the respondent violates the provisions of the Uttar Pradesh Apartment (Promotion Of Construction, Ownership, And Maintenance) Act. The respondent further stated that the Bid document



clearly shows that the petitioner had already inspected the site before dropping the bid and never raised the issue of encroachment.

20. Learned counsel for the petitioner submits that it is pertinent to mention that the petitioner filed a rejoinder and reiterated the averments made in the petition. In the rejoinder, the petitioner reiterated that the respondent failed to fulfill the first condition to make the site encroachment-free so that it became viable for investment of huge money by the petitioner in the said project. It is further submitted that the bid was submitted on account of clear representation by the respondent that the site is a clear piece of land with an earmarked boundary and free from all encroachment. The petitioner stated that the encroachment on site had not been demolished till date nor demarcation of the said land has been done as requested to the District Magistrate vide letter dated 22.08.2022.

21. Learned counsel for the respondent submitted that the demand on the part of the respondent of a huge amount of more than 15 crores was totally justified on account of non-fulfilling the first and foremost obligation of handing over an encroachment-free site.

22. Learned counsel for the petitioner has invited the attention of the Court to Para 8 of the LOA which provides that till such time the Lease Agreement is executed between RLDA and the SPC created by the petitioner company, the LOA dated 29.07.2022 shall constitute a binding contract for fulfilling the requirement of execution of Lease Agreement. Learned counsel for the petitioner has also invited the attention of the court to para 12 of the LOA which states that LOA shall be read in conjunction



with the Bid document and all terms and conditions of the Bid document will be binding on the petitioner and in case of any conflict between LOA and Bid document, the Bid document shall prevail over the LOA. Learned counsel has further invited the attention to Article 23.3, Article 23.4, and Article 23.5.1 to emphasize that there is an arbitration clause and in case of any dispute arising between the parties that is not resolved by mutual consent and conciliation committee the same shall be referred to Arbitration. Learned counsel for the petitioner further stated that the LOA was wrongfully terminated by the respondent. Learned counsel further stated that communication dated 07.02.2023 of the petitioner for a refund of security amount of Rs.11,01,825/- along with interest was not responded to by the Respondent nor the respondent appointed the Arbitrator in accordance with the terms and conditions laid down by the Bid documents. It has been submitted that the disputes between the petitioner and the respondent are still existing and subsisting and can be resolved by way of arbitration as stipulated in Article 23.5.1 of GCLA as amended by Clause 21.1 of SCLA.

23. Learned counsel for the respondent submitted that the present petition is misconceived, misleading, and not maintainable as a valid or enforceable agreement does not exist between the parties that contains the arbitration clause. Learned counsel further submitted that though the LOA dated 29.07.2022 was issued in favor of the petitioner, however, the petitioner failed to fulfill the execution of the Lease Agreement in terms of Clause 26.0 of the Bid document and the LOA cannot be read as an agreement.



24. Learned counsel for the respondent further submitted that as the Lease Agreement was not executed, there is no question of an arbitration clause coming into operation. It was further submitted that even LOA has been canceled vide notice dated 12.01.2023 and therefore even the Letter of Acceptance dated 29.07.2022 does not exist. Learned counsel further submitted that the Land Development Handbook filed by the petitioner itself specifically says that the Handbook is not an agreement and is neither an offer nor an invitation by the RLDA to the prospective bidders or any other persons. Learned counsel however submitted that even the Land Development Handbook in Part II of GCLA defines agreement in Clause 1.1.1. which reads as under:-

"Agreement" shall mean jointly the Lease Agreement (Recital), the General Conditions of Lease Agreement (GCLA), the Special Conditions of Lease Agreement (SCLA), and the Schedules and Appendices thereto."

25. Learned counsel for the Respondent further submits that therefore LOA does not fall within the definition of the agreement. Learned counsel further submitted that Article 23 of the GCLA which is a dispute resolution clause includes arbitration in terms of procedure laid down in Clause 23.5. Learned counsel for the respondent further submitted that since the agreement was not executed Article 23 of the GCLA will not come into play.

26. The first and foremost contention disputing the appointment of an Arbitral Tribunal, as taken by the respondent is that there is no agreement subsisting between the parties. The plea of the respondent is that only Letter of Acceptance (LOA) was issued and as the petitioner failed to fulfill



the terms and conditions of the LOA dated 29.07.2022, there is no existing agreement between the parties. It has been submitted by the learned counsel for the respondent that in the absence of agreement, there is no question of an arbitration clause or an arbitrable dispute between the parties.

27. Per contra, the plea of the petitioner is that the LOA dated 29.07.2022 was issued and Clause 8 of the LOA specifically provides that it constitutes a binding contract for fulfilling the requirement of execution of Lease Agreement. The plea of the petitioner is that since the land which was the substratum of the dispute, was having huge encroachment and therefore the respondent was totally unjustified in demanding the first installment of more than 15 crores. The petitioner's plea is that the respondent despite repeated demands failed to clear the encroachment and did not perform the basic obligation of making the land fit for handing over the same for the purpose of further contract. It is pertinent to mention that the respondent has submitted that firstly there was no encroachment and secondly it was the duty of the petitioner to have inspected the site before putting in the bid papers.

28. The core question is that whether there is an agreement between the parties or the issuance of LOA dated 29.07.2022 can invite the terms and conditions of GCLA which contains the arbitration clause. Both the parties have relied upon the various clauses of the LOA in support of their contentions which have been reproduced hereinabove and are not being reproduced herein for the sake of brevity. It is pertinent to mention here that para 8 of the LOA which specifically provides that the LOA shall



constitute a binding contract for fulfilling the requirement of execution of Lease Agreement. The Lease Agreement was to be executed between the respondent and the Special Purpose Company (SPC) created by the petitioner. It is also pertinent to refer to para 12 of the LOA which provides that the LOA shall be read in conjunction with the Bid document and all terms and conditions of the Bid document will be binding on the petitioner and in case of any conflict between LOA and Bid document, the Bid document shall prevail over LOA. It is necessary to refer to certain relevant Articles /Clauses of the GCLA and SCLA which are as under:-

“Article 23.3 of GCLA: RLDA Arbitration Rules: Provision specified in Article 23.3, 23.4 and 23.5 shall be called as RLDA Arbitration Rules. Arbitration in respect of the project shall be held in accordance with these Rules. The governing law of arbitration shall be the laws of India and the venue of such arbitration shall be Delhi and the language of arbitration proceedings shall be English. The provisions relating to Arbitration shall become operative only after the conditions precedent are fulfilled.

Article 23.5.1 of GCLA as amended by Clause 31.1 of SCLA: In the event of any dispute, difference or controversy of whatsoever nature, arising under or out of or in relation to the instant agreement between the parties hereto, disputes relating to the construction or operation of this agreement, or the respective rights and liabilities of the parties on any matter in question which are not resolved by mutual consent in terms of Article 23.1 and subsequently not resolved by reference to Conciliation Committee in terms of Article 23.2 but except in any of the Expected matters referred to in Article 23 .4 of these conditions, shall be finally decided by reference to arbitration in accordance with the RLDA Arbitration Rules as stated under Article 23 .3 and shall be subject to the provisions of the Arbitration and Conciliation Act, 1996.



Article 23.5.2 of GCLA as amended by Clause 31.2 of SCLA:
Either party may give a notice of intent demand for arbitration to the other party. There shall be an arbitral Tribunal consisting of three arbitrators. The claimant and respondent shall have the right to appoint one arbitrator each and the third arbitrator shall be appointed by two arbitrators so appointed. The notice of intent/demand for arbitrator shall specify the matters which are in question or subject of dispute as also the amount to total and item wise claim. Only such Disputes, in respect of which the demand has been made, together with counter claims or set off, given by RLDA, shall be referred to arbitration and other matters shall not be included in the reference.”

29. A bare reading of this makes it clear that at the outset there is a provision for the dispute resolution in the form of the arbitration. It is also pertinent to mention that along with request for proposal (RFP) with regard to Grant for Residential Development on Railway Land approx. area 70606 sq. mtr at Jhusi Land Plot, Prayagraj under Varanasi under Varanasi Division of NER (U.P.) for 99 years. The bid documents were duly annexed which included the Land Development Handbook. The contention of the respondent that it contains a Disclaimer clause, that Handbook is not an agreement and is neither an offer nor an invitation by the RLDA to the prospective Bidders or any other person and the same cannot be read to mean that the bidder in case of any dispute shall not be entitled to the provisions contained in the same. Part I of the Bid documents provides regulations for bids and lease agreements. It is interesting to note that though the respondent himself is relying upon the same Bid document by resorting to definition of agreement as provided in Part II of the Handbook under the heading General Conditions of Lease Agreement (GCLA), but is



not inclined to accept that the arbitration clause in the same GCLA can be taken benefit of. The dispute resolution clauses in such matters are of utmost importance. The purpose of such clauses is to ensure that in case of any dispute between the parties, any type of unnecessary litigation should be avoided and parties may settle the dispute preferably by mutual consent or by conciliation failing which through the arbitration. On the face of it, there is a dispute between the parties, the LOA was admittedly issued in favor of the Petitioner. Pursuant to this, the respondent demanded a lease premium of more than 15 crores which was not paid by the petitioner as the land was not free from encroachment. The plea of the respondent that the petitioner should have inspected the site before or that there is no encroachment is a dispute which needs to be examined and adjudicated upon. The averment, that the LOA itself till the lease is executed, is a binding agreement and secondly the bid documents have to be read along with the same leads to the unavoidable conclusion that Article 23 in the GCLA could be invoked by either of the parties. The petitioner has duly invoked the same and the respondent in the reply has simply denied of any agreement. The jurisdiction of the Court under Section 11 is very limited the Court is only required to see whether an agreement exists which contains the arbitration clause exists and secondly whether arbitral dispute has arisen between the parties or not.

30. In view of the discussion made hereinabove, I consider that there is an agreement between the parties which contains the arbitration clause and the same is to be invoked. Thus, the present petition is disposed of with the following directions:



- i) The disputes between the parties under the said agreement are referred to the arbitral tribunal.
- ii) Justice G.P. Mittal, Former Judge of this Court (Mobile No.9910384619) is appointed as an Arbitrator to adjudicate the disputes between the parties.
- iii) The remuneration of the learned Arbitrator shall be in terms of Schedule IV of the A&C Act or as the parties may agree.
- 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 on 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.

The petition is disposed of in the above terms.

DINESH KUMAR SHARMA, J

JANUARY 29, 2024

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