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IN THE HIGH COURT OF DELHI AT NEW DELHI

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ARB.P. 558/2023

THE PRASAR BHARATI

..... Petitioner

Through: Ms. Madhusmita Bora, Mr. Bijoy
Kumar Pradhan, Advs.

versus

VISUAL TECHNOLOGIES INDIA PVT. LTD. Respondent

Through: Mr. Kumar Shashank, Mr. Nivesh
Kumar, Mr. Piyush Tenk, Advs.

CORAM:

HON'BLE MR. JUSTICE JASMEET SINGH

ORDER

18.03.2024

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1. This is a petition filed under section 11(6) of the Arbitration and Conciliation Act, 1996 (“1996 Act”) seeking appointment of an Arbitrator to adjudicate the disputes between the parties.
2. The petitioner floated an Advance Tender dated 25.07.2016 for supply of nine (9) Digital Satellite News Gathering Services (“DSNG”) terminals at nine (9) locations. The respondent participated in the tender and the petitioner accepted the bid of the respondent. Thereafter, an Acceptance of Tender being AT No. 1776 dated 12.10.2017 (“contract”) was issued by the petitioner to the respondent.
3. The arbitration clause reads as under:

“32. ARBITRATION

If any dispute, difference, question or dis-agreement shall at any time, hereafter arise, between the parties hereto or the respective representatives or assignees in connection with or arising out of the contract or in respect of meaning of



specification, design, drawings, estimates, schedules, annexures, orders, instructions, the construction, interpretation of this agreement, application of provisions thereof or anything hereunder contained or arising hereunder or as to the rights, liabilities or duties of the said parties hereunder or any matter whatsoever incidental to his contract or otherwise concerning the works of execution or failure to execute the same whether during the progress of work or stipulated/extended periods or before or after the compilation or abandonment thereof, it shall be referred to the sole arbitration of the person appointed by the Chief Executive Officer, Prasar Bharati . There will be no objection to any such appointment that the arbitrator so appointed is an employee of this Organisation or that he had to deal with the matters to which contract relates and that in the course of his duties as this Organisation employees he had expressed views on all or any of the matters in dispute or difference.

If an arbitrator to whom the matter is referred dies or refuse to act or resigns for any reason from the position of arbitrator, it shall be lawful for the Chief Executive Officer, Prasar Bharati to appoint another person to act as arbitrator in the manner aforesaid. Such person shall be entitled to proceed with the reference from the stage at which it was left by his predecessor if both the parties consent to Chief Executive Officer, Prasar Bharati to this effect failing which the arbitrator will be entitled to proceed denovo.

It is a further term of this contract that no person other than the person appointed by the Chief Executive Officer, Prasar Bharati as aforesaid shall act as arbitrator and that, if for any reason that is not possible, the matter is not to be referred to the arbitration at all.

The arbitrator(s) may from time to time, with the written consent of all the parties to the contract enlarge the time for



making and publishing the award.

It is a term of the contract that the party invoking arbitration shall specify the dispute or disputes to be referred to arbitration under the clause.

It is also term of the contract that contractor shall not stop the work under this contract and work shall continue as expected to continue whether the arbitration proceedings have commenced or not.

The arbitrator shall give reasoned award in respect of each dispute or difference referred to him. The award as aforesaid shall be final and binding on all the parties to the contract in accordance with the Indian law.

The Venue of the arbitration shall be at New Delhi, India. Subject to as aforesaid, the provision of the Indian Arbitration and Conciliation Act, 1996 and any statutory modifications or re-enactments there of rules made there under and for the time being in force shall apply to the arbitration proceedings under this clause.”

4. As there were disputes between the parties and the petitioner instead of appointing an Arbitrator of its choice has filed the present petition seeking appointment of an Arbitrator.
5. The respondent has filed a reply which is not on record. He has handed over a copy of the same which is taken on record.
6. Mr. Shashank, learned counsel for the respondent takes an objection that there is no notice invoking arbitration under Section 21 of 1996 Act which is a statutory requirement and hence this petition is liable to be dismissed at threshold. Further, all other disputes are with regard to factual issues.
7. It is well settled law that a petition seeking appointment of an



Arbitrator is based on the notice invoking Arbitration under Section 21 of the 1996 Act. The mandate of Section 21 of 1996 Act is that there should be a request for dispute to be referred to arbitration. This Court in *Shriram Transport Finance Co. Ltd. vs. Shri Narendra Singh*, (2022) SCC OnLine Del 3412 considering *Alupro Building Systems Pvt. Ltd. vs. Ozone Overseas Pvt. Ltd.*, (2017) SCC OnLine Del 7228 has observed as under:-

“33. We are in agreement with the principles as expressed in the decision of Alupro Building case (supra), which are enunciated below:

(i) The party to the Arbitration Agreement against whom a claim is made should know what the claims are. The notice under Section 21 of the Act provides an opportunity to such party to point out if some of the claims are time barred or barred by law or untenable in fact or if there are counter-claims.

(ii) Where the parties have agreed on a procedure for appointment, whether or not such procedure has been followed, will not be known to the other party unless such a notice is received.

(iii) It is necessary for the party making an appointment to let the other party know in advance the name of the person who it proposes to appoint as an Arbitrator. This will ensure that the suitability of the person is known to the opposite party including whether or not the person is qualified or disqualified to act as an Arbitrator for the various reasons set forth in the Act. Thus, the notice facilitates the parties in arriving at a consensus for appointing an Arbitrator.

(iv) Unless such notice of commencement of Arbitral proceedings is issued, a party seeking reference of disputes to Arbitration upon failure of the other party to adhere to such



request will be unable to proceed under Section 11(6) of the Act. Further, the party sending the notice of commencement may be able to proceed under the provisions of Sub-section 5 of Section 11 of the Act for the appointment of an Arbitrator if such notice does not evoke any response.”

8. Section 21 of the 1996 Act reads as under:

“21. Commencement of arbitral proceedings.—Unless otherwise agreed by the parties, the arbitral proceedings in respect of a particular dispute commence on the date on which a request for that dispute to be referred to arbitration is received by the respondent.”

9. There is no fixed format of notice invoking arbitration. The requirement in law is that the party invoking arbitration must highlight the disputes between the parties and make a request that in case the disputes are not resolved, arbitration proceedings shall be commenced. The intention to invoke the redressal of disputes through the arbitral process must clearly spelt out in the notice. Hence in my view, the notice under Section 21 of 1996 Act must clearly state as follows:-

- a. The dispute between the parties.
- b. The demand to resolve the disputes as per the envisaged arbitration clause.
- c. In case, the disputes are not resolved the intention to resort to the arbitral process.
- d. The notice must be sent to the respondent.

10. In the present case at hand, petitioner relies upon the letter dated 22.09.2021 written to the respondent to urge that the said letter fulfils the ingredients of Section 21 of 1996 Act. The letter dated 22.09.2021 is



reproduced as under:

**PRASAR BHARATI
INDIA'S PUBLIC SERVICE BROADCASTER
DIRECTORATE GENERAL: DOORDARSHAN
DOORDARSHAN BHAVAN
COPERNICUS MARG, NEW DELHI 110 001**

File No. 14(2)2016-17EI(P)TV/1776

Date: 22/09/2021

M/s Visual Technologies India Pvt. Ltd.,

(Email- disha@vtipl.com, nmmehra@vtipl.com, azim@vtipl.com)

D-350, Sector-63,

Phase-III, Noida-201307, U.P.(India)

Subject: Providing New DSNG terminal at 9 locations.

Ref: 1. DG: DD AT No. 14(2)2016-17EI(P)TV/1776 dated 12/10/2017.

With reference to above referred AT, it may be noted that the following long pending issues related with newly supply 07 DSNGs out of 09 DSNGs are not resolved by you till date. The consolidated station wise issues are mentioned below:

S.No.	Name of Kendra	Faulty Equipment	Remarks
1	DDK Ahmedabad	HPA	Repairing/ replacement of HPA .
2	DDK Itanagar	UPS make ETN	Repairing of the UPS, Antenna Dish, Hydraulic Jack Motor and Polarization Motor of the DSNG Van.
		Antenna Dish	
		Hydraulic Jack Motor	
		Polarization Motor	
3	DDK Agartala	Polarization Motor of PDA	Repairing of the Polarization Motor of PDA, Hydraulic Jack system and Modulator redundancy switch of the DSNG Van. Also, firm to arrange demonstration for deploying of PDA manually in case of exigency.
		Hydraulic Jack system	
		Modulator redundancy switch	
4	DDK Varanasi	Vision Mixer HD/SD	Repairing of Vision Mixer HD/SD 6 Channel, RF Switch, Audio Console Panel, Terminal Panel, Tally Light (Camera), Polarization Motor and Hydraulic Jack of
		6 Channel	
		RF Switch	

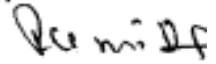
[Signature]
A.O.E.



		Audio Console Panel	the DSNG Van.
		Terminal Panel	
		Tally Light (Camera)	
		Polarization Motor	
		Hydraulic Jack	
5	DDK Delhi	HPA Control Standby Power Supply	Repairing of HPA Control Standby Power Supply and Fire Alarm System of the DSNG Van which is pending from last six months.
		Fire Alarm System	
6	DDK Vijayawada	HPA	Repairing of HPA .
7	DDK Guwahati	Hydraulic Jack	Repairing of Hydraulic Jack, All the Doors, Handles and its Locks, Spare Wheel storing/ handling system; Laptop, Vision Mixer and Antenna of DSNG Van.
		All the Doors, Handles and its Locks	
		Spare Wheel storing/ handling system	
		Laptop	
		Vision Mixer	
		Antenna	

You are required to resolve all the above issues on priority basis and submit final report to this Directorate within 7 days, failing which action will be initiated as per tender terms and conditions.

This issue with the approval of competent authority.



(R.P.Mittal)

Asstt. Director (Engg.)

Ph. No. 011-23114278

Copy to :

1. DDG(E), Satellite Design, DG:DD
2. DDG(E), Satellite Maintenance, DG:DD

Copy for information to:

1. ADG(Procurement), AIR & DD

11. A perusal of the letter clearly shows that the petitioner has highlighted the disputes between the parties and also stated that in case the disputes are not resolved on priority basis within 7 days, the action will be taken as per the tender terms and conditions. The tender terms and conditions clearly



mandate that if any disputes arises between the parties, the same shall be referred to the Sole Arbitrator.

12. Further, arbitration clause 32 mandates as under:

“.....

It is a term of the contract that the party invoking arbitration shall specify the dispute or disputes to be referred to arbitration under the clause

.....”

13. According to me, letter dated 22.09.2021 fulfils the ingredients of Section 21 as the said letter amounts to request for the disputes to be referred to the arbitration. Hence the letter dated 22.09.2021 amounts to valid notice invoking arbitration.

14. The arbitration clause as reproduced above clearly shows that it was the petitioner's sole option to appoint the arbitrator. The said clause is bad in law in view of the judgment of ***“Perkins Eastman Architects DPC & Ors. vs. HSCC (India) Ltd., (2020) 20 SCC 760”***.

15. For the reasons noted above, the petition is allowed and disposed of with the following directions:

- i. Mr. D.S. Mehandru (Advocate) (Mob. No.9871614441) 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’). The remuneration of the learned Arbitrator shall be in terms of the Fourth Schedule of the Arbitration & Conciliation Act, 1996.



- iii. The learned Arbitrator is requested to furnish a declaration in terms of Section 12 of the Act prior to entering into the reference.
- iv. 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.
- v. The parties shall approach the learned Arbitrator within two weeks from today.

JASMEET SINGH, J

MARCH 18, 2024/DM

[Click here to check corrigendum, if any](#)