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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **ARB.P. 502/2024**

M/S KRISHNA UDYOG

..... Petitioner

Through: Mr. Kamlesh Ojha and Mr. Yudhvir
Singh Chauhan, Advs.
(M:9667661011)

versus

UNION OF INDIA & ANR.

..... Respondents

Through: Mr. Vineet Dhanda, CGSC.
(M:9811013810)

CORAM:

JUSTICE PRATHIBA M. SINGH

ORDER

% **10.05.2024**

1. This hearing has been done through hybrid mode.
2. The present petition has been filed on behalf of the Petitioner-M/s Krishna Udyog under Section 11 of the Arbitration and Conciliation Act, 1996 (*hereinafter 'the Act'*) seeking appointment of an Arbitrator in respect of the dispute arising between the parties on account of Recovery Notice dated 9th November, 2023 issued by the Office of the Dy. Chief Signal & Telecomm Engr./Const., Northern Railways. The Petitioner claims that under Clause 2900 of the Indian Railways Standard General Conditions of Contract, and pursuant to the purchase order bearing No. 08215078206307, dated 22nd December 2021, issued by the Office of the Principal Chief Materials Manager, Northern Railways (*hereinafter referred to as 'the Purchase Order'*), the present dispute between the parties is liable to be referred to arbitration.
3. Notice was issued in the present arbitration petition on 22nd April, 2024.



4. The case of the Petitioner is that on 8th July, 2021 a tender was issued by the Respondent for procurement of signalling cable, which was accepted by the Petitioner. Accordingly, a Purchase Order was placed for supply of PVC insulated railway signalling cable. The total value of the purchase order was Rs. 42,69,16,367.57/-. It is stated that the Petitioner supplied the ordered quantity of 843.15 km material against the Purchase Order within the time period. However, pursuant to an inspection conducted solely by the Respondent on 10th March, 2023, the Respondent on 9th November, 2023 issued a warranty rejection advice with a claim of Rs. 2,07,27,836.00/-. Subsequently, in respect of the said warranty rejection advice and claim, the Petitioner invoked arbitration in terms of Section 21 of the Arbitration and Conciliation Act, 1996 vide notice dated 26th March, 2024.

5. It is averred by the Petitioner that there has been no reply submitted by the Respondents to the invocation of arbitration.

6. *Per Contra*, on behalf of the Union of India, it is submitted that there has been no invocation of arbitration in the present case in terms of Section 21 of the Act. It is also submitted that even otherwise, the Tribunal has to be constituted with a panel which is maintained by the Union of India itself as agreed by the Petitioner.

7. A perusal of the letter dated 26th March, 2024 would show that the subject of the same is relating to non-acceptance of warranty rejection, however, after asking the department to resolve the issue at the end, the Petitioner has clearly stated as under:

“So It is to request you, please nominate the other inspection authority to further one time inspection of alleged/ failed goods, so that conclusion/ conformity of status of supplied good may obtain before issue any



further order i.e. warranty rejection advice or any. As such we requesting you for intervene in this matter and early reply /response from your end within 15 days to enable us to joint inspection of goods of rejected materials. Also the contract govern with Arbitration Clause 2900 , if failed to accept our request as above then kindly appoint Arbitrator as per contract terms and conditions.”

8. The above would clearly constitute an invocation of the clause as all the monetary claims, etc., are all mentioned in this particular letter. Thus, the objection that there is no invocation under Section 21 of the Act is not tenable.

9. In view of the above, since there is clearly an arbitration clause which contemplates appointment of a three-member tribunal, the tribunal is constituted with the following members/ presiding arbitrators, with the consent of parties:

<i>Sr. No.</i>	<i>Name</i>	<i>Designation</i>	<i>Mobile No.</i>
i)	Mr. Arvind Mital	IRSSE, Presiding Arbitrator	9910487300
ii)	Mr. Pradeep Kumar	IRSS Member	8800880768
iii)	Mr. Ranjan Saksena	IRSEE - Member	9818837722

10. The Arbitration shall take place in terms of the Rules of the International Arbitration Centre (IIAC).

11. Copy of this order be communicated to the Registrar, IIAC at mob no. 9810759224 and email: registrar@indiaiac.org.



12. List before the IIAC on 4th July, 2024.

13. Accordingly, the petition is disposed of. Applications, if any, are also disposed of.

PRATHIBA M. SINGH, J.

MAY 10, 2024

dj/am