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IN THE HIGH COURT OF DELHI AT NEW DELHI

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ARB.P. 503/2024 and I.A. 9822/2024

OFB TECH PRIVATE LIMITED

..... Petitioner

Through: Mr. Samrat Nigam, Mr. Sanyam
Khetarpal, Ms. Prakriti Anand and
Mr. Nitai Agarwal, Advocates.

versus

**INDO-BHUTAN CONSTRUCTION SOLUTIONS PRIVATE
LIMITED & ORS.**

..... Respondents

Through: Mr. Pradyuman Dubey and Ms.
Jasmin Sokhi, Advocates for R-1 to
R-4.

CORAM:

HON'BLE MR. JUSTICE ANUP JAIRAM BHAMBHANI

ORDER

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02.05.2024

I.A. 8712/2024 (exemption)

Exemption granted, subject to just exceptions.

Application stands disposed-of.

ARB.P. 503/2024

Though no notice was issued on this petition, *vide* last order dated 22.04.2024, the petitioner was directed to serve a copy of that order upon the respondents, requesting them to be represented with instructions today.

2. Pursuant to order dated 22.04.2024, Mr. Pradyuman Dubey, learned counsel appears on behalf of respondents Nos. 1 to 4 and submits that though the arbitration agreement between the parties contemplates a 03-member Arbitral Tribunal and both parties have nominated their respective arbitrators on the panel, in view of the suggestion made on



behalf of the petitioner, respondents Nos. 1 to 4 are agreeable to having their disputes referred to a Sole Arbitrator.

3. For completeness, Mr. Nigam has drawn attention of this court to clause 16.8 of the Asset Transfer Agreement dated 11.04.2022 ('Agreement'), which comprises the arbitration agreement; and contemplates reference of disputes between the parties to arbitration in accordance with the Arbitration & Conciliation Act, 1996 ('A&C Act'); with the 'seat' and 'venue' of arbitration being at New Delhi.
4. It may be recorded that a separate territorial jurisdiction provision is also contained in clause 16.7 of the Agreement, which subjects the contract between the parties to the jurisdiction of competent courts at New Delhi.
5. As per the record, the petitioner had invoked arbitration *vide* Notice dated 02.01.2024; and it transpires that respondents Nos. 1 to 4 had responded to the said notice *vide* reply dated 31.01.2024.
6. Mr. Dubey however submits, that respondent No.5/M/s OMAT Business Pvt. Ltd., impleaded in the present petition as a *pro-forma* respondent, is not a necessary party to the arbitral proceedings.
7. Mr. Samrat Nigam, learned counsel appearing for the petitioner disputes the submission, saying that the learned Arbitrator would not be able to fully and finally adjudicate the disputes between the parties in the absence of respondent No. 5.
8. Upon a brief hearing, this court is of the view that whether or not respondent No.5 is a necessary party to the arbitral proceedings requires a closer consideration of the terms and conditions of the



contract between the parties. Therefore, in the opinion of this court, that issue is best left to be decided by the learned Arbitrator.

9. Upon a conspectus of the averments contained in the petition, the stand taken by respondents Nos. 1 to 4, and the submissions made, this court is satisfied that there is a valid and subsisting arbitration agreement between the parties; that this court has territorial jurisdiction to entertain and decide the present petition; and also that the disputes that are stated to have arisen between the parties, as set-out *inter-alia* in invocation notice dated 02.01.2024, do not appear *ex-facie* to be non-arbitrable.
10. Accordingly, the present petition is allowed and **Hon'ble Mr. Justice Challa Kodanda Ram, former Judge, High Court of Telangana, (Cellphone No.: +91 8331010695)** is appointed as the learned Sole Arbitrator to adjudicate upon the disputes between the parties
11. The learned Sole Arbitrator would furnish to the parties requisite disclosures as required under section 12 of the A&C Act; and in the event there is any impediment to the appointment on that count, the parties are given liberty to file an appropriate application in this court.
12. The learned Arbitrator shall be entitled to fee in accordance with Fourth Schedule to the A&C Act; or as may otherwise be agreed to between the parties and the learned Arbitrator.
13. Parties shall share the arbitrator's fee and arbitral costs, equally.
14. All rights and contentions of the parties in relation to the claims/counter-claims are kept open, to be decided by the learned Arbitrator on their merits, in accordance with law.



15. Parties are directed to approach the learned Arbitrator appointed within 02 weeks.
16. A copy of this order be communicated by the Registry *via* e-mail to the learned Sole Arbitrator, as also to learned counsel for the parties.
17. As requested, it is made clear that respondents Nos. 1 to 4 shall be at liberty to raise their contentions that respondent No.5/M/s OMAT Business Pvt. Ltd. is not a necessary party and cannot therefore be joined in the arbitral proceedings before the learned Arbitrator, which issue will be decided by the learned Arbitrator in accordance with law.
18. The petition stands disposed-of in the above terms.
19. Other pending applications, if any, also stand disposed-of.

ANUP JAIRAM BHAMBHANI, J

MAY 2, 2024/ak