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

+ **ARB.P. 602/2023**

**MR GIREESH M DHANDE SOLE PROPRIETOR OF M/S**

**JAIPRAJ ENGINEERING COMPANY** ..... Petitioner

Through: Mr. Sahil Chopra, Mr. Nitin Gupta,  
Ms. Aadrisha Malhotra, Mr. Ayush  
Chauhan, Mr. Keshav Ray, Ms.  
Anjali Sesodia, Advs.

versus

**M/S SARENS HEAVY LIFT INDIA PVT LTD** ..... Respondent

Through: Mr. Dibya Nishant, Ms. Bitisha  
Singh, Advs.

**CORAM:**

**HON'BLE MR. JUSTICE JASMEET SINGH**

**ORDER**  
**16.01.2024**

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1. This is a petition filed under section 11(6) of the Arbitration and Conciliation Act, 1996 seeking appointment of an Arbitrator.
2. Mr. Chopra, learned counsel for the petitioner states that the petitioner had performed work for the respondent. The respondent was awarded a contract/project at Manali and subsequently placed a purchase order bearing No. 4501/23/19/0996 dated 31.05.2019.
3. The Arbitration Clause in the Purchase Work/Order reads as under:-  
“*Arbitration*”



*If any dispute or difference arises out of or relates to the PURCHASE ORDER whether during the progress of the PURCHASE ORDER or after its completion or whether before or after the termination, abandonment or breach of the PURCHASE ORDER and such dispute or difference cannot be resolved by SELLER and BUYER, either PARTY shall, within thirty (30) BUSINESS DAYS from the occurrence or failure to reach agreement, give the other notice in writing of the existence of such dispute, specifying its nature and the point at issue. The notice shall also Include a detailed description of the facts of the dispute with relevant dates, names of personnel involved, references to relevant documentation (with copies attached), the pertinent PURCHASE ORDER provision(s), and a statement of contentions and conclusions and the PARTIES shall proceed to resolve such matter by arbitration.*

*The arbitration shall be conducted in accordance with the [Indian] Arbitration and Conciliation Act, 1996 ("ARBITRATION ACT") and the rules, if any, made there under and any statutory modification thereof, by 3 arbitrators appointed pursuant to the provisions of the ARBITRATION ACT.*

*The arbitration proceedings shall be held in Delhi. The arbitration proceedings shall be conducted in English language. The decision of the arbitrator(s) shall be final, binding and non-appealable. Judgment upon any award rendered may be entered into any court having jurisdiction or application may be made to*



*such court for judicial acceptance of the award or an order of enforcement, as the case may be.*

*It is agreed however that the arbitrator shall not be an employee of either PARTY or in any way financially interested in the PURCHASE ORDER, dispute or claim.*

*Each PARTY shall contribute equally towards the costs of the arbitrator's award. The cost of arbitration shall be finally borne by the PARTY whose contention was not upheld by the arbitration award.*

*It is also a term of the PURCHASE ORDER that SELLER shall not stop the work under the PURCHASE ORDER and shall continue the same as expected regardless of whether the arbitration proceeding have commenced or not."*

4. Since disputes arose between the parties, the present petition has been filed.
5. Mr. Nishant learned counsel appearing for the respondent raises an objection that the invocation of Arbitration is not as in terms of the Arbitration Clause. He further states that the petitioner did not approach the respondent for settlement and even the invocation is devoid of details as enumerated in the arbitration agreement.
6. A perusal of the exchange of emails shows that the petitioner on 01.04.2021 sent a mail seeking amounts claimed by the petitioner. The petitioner again reiterated its claim on 08.02.2022. The respondent on 08.02.2022 agreed to the claims of the petitioner and requested the petitioner to resend the bills in terms of e-mail dated 08.02.2022 of the respondent. Further, the respondent requested the petitioner to submit invoice for the



balance amount and invoice for extension of manpower.

7. Subsequently, the petitioner sent repeated e-mails to the respondent reiterating its request for the amount due and payable. On 27.05.2022, the respondent resiled from its earlier mail of 08.02.2022. Hence, *prima-facie* the petitioner has repeatedly tried to settle its disputes with the respondent but no avail.

8. For the said reasons, I am unable to agree with the contentions of the respondent.

9. The notice dated 19.04.2023 invoking arbitration is also a detailed notice giving clear description of the amount due and payable.

10. There is no other substantial and opposition to the instant petition seeking appointment of an arbitrator.

11. Even though the arbitration clause contemplates appointment of three arbitrators, without prejudice to the merits, both the counsels agree to the appointment of the Sole Arbitrator.

12. In view of the above, the instant petition is allowed with the following directions:-

- i) Mr. Justice Jayant Nath (Retd.) (Mob. No.8527959494) 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.
13. Needless to add, this is a prima facie view and the parties shall be at liberty to agitate their entire grievance including maintainability of the arbitration before the learned arbitrator.
14. The petition is allowed and disposed of in the aforesaid terms.

**JASMEET SINGH, J**

**JANUARY 16, 2024/NG**

*Click here to check corrigendum, if any*