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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **ARB.P. 530/2024**
NITIGYA CONSTRUCTIONS PVT & ANR.

.....Petitioner

Through: Mr. Udit Seth, Mr. Divyanshu Singh,
Advs.

versus

HINDUSTAN FIBERS LTD

.....Respondent

Through:

CORAM:
HON'BLE MR. JUSTICE JASMEET SINGH

ORDER

% **05.07.2024**

1. This is a petition filed under section 11 of the Arbitration and Conciliation Act, 1996 seeking appointment of an arbitrator to adjudicate the dispute between the parties.
2. The petitioner was awarded the contract on 07.06.2014 and the parties entered into the agreement on 09.06.2014.
3. On 01.05.2015, a Letter of Award (LoA) was issued to the petitioner No.1 for the work remaining in the scope of petitioner No.2.
4. The contract between the petitioner No.1 and the respondent was foreclosed on 31.12.2015.
5. On 07.11.2020, the petitioner replied to the respondent's email of 04.11.2020 and clarified that the petitioner only agreed to remaining work being awarded to KKBL but never suggested making payment due to petitioner No.1 to KKBL.
6. Since no payment was made to the petitioner, the petitioner on 12.01.2021 sent a legal notice to the respondent.



7. On 17.09.2022, the petitioner invoked clause 2.42.1 of the agreement and called upon the respondent for amicable settlement. However, the same did not fructify.
8. The petitioner on 10.01.2023 invoked the arbitration clause being clause 2.42 of the agreement. Clause 2.42 of the agreement reads as under:-

“2.42 ARBITRATION AND SETTLEMENT OF DISPUTES

2.42.1 In the event a dispute arises in connection with the interpretation or implementation of Agreement, including any question regarding its existence, validity or termination, either Party may notify the other party in writing of substance of the dispute and of its desire to reach an amicable settlement. The parties shall have a period of thirty (30) days after notice date to resolve the dispute amicably. The matter will be referred for resolution between the contractor and Builder. They shall then refer the matter and the agreed course of action documented within a further period of 10 (ten) days, In the event that a settlement is not reached during such a period (as such period may be extended by agreement between the Parties), then either Party may at any time thereafter submit the dispute to the Bhiwadi/Delhi jurisdiction.

2.42.2 The arbitration shall take place in Delhi/Bhiwadi. There shall be three (3) arbitrators who shall be appointed in accordance with the rules. The arbitral award shall be final and binding on the Parties. Both Parties agree with each other to be bound by the arbitration award and shall act in accordance with the arbitration award. Any competent court or governmental authority may enforce the arbitration award.

2.42.3 In any arbitration proceedings and any legal proceedings to seek recognition and/or enforcement of any arbitral award pursuant to or relating to this agreement, each



party expressly waives any defense of sovereign immunity that may be available to it and any other defense based on the fact or allegation that it is an instrumentality or a division of a sovereign state or that its assets belong to a sovereign state.”

9. The notice was issued on 29.04.2024. The respondent appeared on 21.05.2024 and was granted 4 weeks to file a reply.
10. No reply has been filed. There is nobody present for the respondent in the first call and none appeared even in the second call.
11. For the said reasons, the petition is allowed.
12. Mr. Seth, learned counsel for the petitioner states that he restricts his prayer for referring the disputes to a sole arbitrator.
13. In this view of the matter, the petition is allowed and the following directions are issued:-
 - i) Ms. Shilpa Ohri, Advocate (Mob. No. 9871900539) 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

JULY 5, 2024 / (MS)

Click here to check corrigendum, if any