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

+ **ARB.P. 553/2024**

DH BUILDMATE PRIVATE LIMITEDPetitioner
Through: Mr Niranjan Sahu and Mr Dheeraj P Deo, Advs.

versus

TOTO PRESTRESSING SYSTEMRespondent
Through: Mr Mohit Prasad and Mr Sunil Behel, Advs.
(through VC)

CORAM:
HON'BLE MR. JUSTICE JASMEET SINGH

ORDER

% **18.07.2024**

1. This is a petition under Section 11(6) of the Arbitration and Conciliation Act, 1996 seeking appointment of the Sole Arbitrator.
2. The petitioner received letter of intent dated 15.06.2023 and Work Order dated 28.07.2023 in its favour from the respondent for civil and part structural works to be carried out at Jindal Steel and Power Limited ("JSPL") factory in Angul, Odisha.
3. The petitioner started mobilization of resources. It is stated that the petitioner also mobilized its plant and machinery along with man power.
4. Clause 38 of the Work Order contains the arbitration clause which reads as under:

"38. ARBITRATION

a) Any disputes or differences arising out of, in connection with or in relation to this Contract ("Disputes") shall in the first instance be attempted to be resolved amicably by negotiations



in good faith between the Parties.

- b) However, in case any Dispute or Disputes cannot be amicably resolved/settled within 30 days, the same shall be referred to arbitration.*
- c) Arbitration shall be in accordance with the provisions of the Indian Arbitration and Conciliation Act 1996 as amended from time to time.*

Upon the failure of the negotiation process as set out in above clause, either Party may seek the reference of the Dispute/Disputes to arbitration by serving upon the other of written demand that such matter be arbitrated. Written demand shall include a brief description of the disputes and shall specify the name and address of an arbitrator selected by him. The other Party shall within 20 days of receipt of the arbitration demand select his arbitrator and provides the name and address of such arbitrator to the demanding Party and his arbitrator. The two selected arbitrators shall within 15 days of the selection of the second arbitrator select the third arbitrator. In case the two arbitrators are not able to agree on the- third arbitrator, the same shall be appointed as per the Indian Arbitration and Conciliation Act 1996 as amended from time to time.

- d) The place of arbitration shall be New Delhi, India and the laws applicable to the arbitration procedures shall be in accordance with the laws of India. The English language shall be used throughout the arbitrage proceedings. The Parties and*



the arbitrators shall proceed with the arbitration expeditiously and shall use their best endeavours to conclude the Arbitration within 90 days from the date of start of Arbitration proceedings.

e) The decision of any two of the three arbitrators shall be final and binding. The parties agree that the decision and any award rendered by the arbitrators in connection with a Dispute:

(i) Shall be final and binding on the Parties.

(ii) Shall be the sole and exclusive remedy between the Parties regarding the Dispute. The arbitration expenses shall be borne as per the award of arbitration if same are given in the award of arbitration else same shall be borne by the losing party.”

5. Since there were disputes between the parties, the petitioner invoked the arbitration clause vide legal notice dated 12.02.2024.

6. Since the disputes were not settled, the present petition has been filed.

7. Notice was issued on the last date of hearing and Mr Mohit Prasad, Advocate appears for the respondent. He states that he has no objection to the petition being allowed.

8. Learned counsel for the parties state that it will be in the interest of both parties if they are referred to mediation to work out a viable solution for all the disputes.

9. For the said reasons, the petition is allowed. As of today the parties are still having disputes between them, the following directions are issued:-

i) Ms. Nandita Rao, Advocate (Mob. No. 9999031918) 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/counter-claims on merits of the dispute of either of the parties, are left open for adjudication by the learned arbitrator.
 - v) The DIAC shall initiate the arbitration process after 6 weeks from today in order to enable the parties to explore a possibility of settlement. The parties are referred to Delhi High Court Mediation and Conciliation Centre for the said purposes and shall appear before Delhi High Court Mediation and Conciliation Centre on 24.07.2024 at 03:30 p.m.
10. The petition is allowed and disposed of in the aforesaid terms.

JASMEET SINGH, J

JULY 18, 2024/sr [Click here to check corrigendum, if any](#)