



2024:DHC:6108



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

+ **ARB.P. 698/2023**

M/S GRIM TECH PROJECTS (I) PVT. LTDPetitioner
Through: **Mr. Bipin Kumar Prabhat, Adv.**

versus

INDURE PRIVATE LIMITEDRespondent
Through: **Ms. Simran Wason, Adv.**

CORAM:
HON'BLE MR. JUSTICE C. HARI SHANKAR

ORDER (ORAL)
12.08.2024

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1. This is a petition under Section 11 (6) of the Arbitration and Conciliation Act, 1996 (“the 1996 Act”) seeking reference of dispute between the parties to arbitration.

2. Clauses 13.5 and 14 of the General Conditions of Contract (GCC) governing the relationship between the parties, and providing for settlement of disputes, read as under:

“13.5 SETTLEMENT OF DISPUTES

Any dispute(s) or differences arising out of or in connection with the contract shall, to the extent possible, be settled amicably between the parties.

All unsettled dispute(s) or difference(s) arising out of or in connection with the contract shall be decided by the Engineer whose decision shall be final and binding on the parties.

Prior to the initiation of any/or arbitration proceedings permitted by this contract to resolve disputes between them, in the event a dispute arises between the Employer and the contractor regarding



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the application or interpretation of this contract (a "Dispute"), the Employer's Project Incharge/Engineer and the contractor's representative shall use their best efforts in good faith to reach a reasonable and equitable resolution of the matter. If the Employer's Project Incharge/Engineer and the contractor's representative are unable to resolve the matter within 30 days, either party by written notice may refer the matter for resolution by good faith negotiation between their respective senior officers with decision making power and who shall not have had substantive involvement in the matters involved in the dispute, unless the parties otherwise agree.

14.00 ARBITRATION:

Where any dispute is not resolved as provided for in the clause 13.5 then the following provisions shall apply:

- a) The dispute shall be referred to arbitration at the request of either party upon written notice to that effect to the other party (a "Notice of Reference") in accordance with the Arbitration Rules of Indian Arbitration and Conciliation Act, 1996 in force at the date of the agreement. Where the rules do not deal with any issue arising in connection with the conduct and/or procedure of the arbitration such issue shall be resolved in accordance with the law of the place in which the arbitration is held and GCC clause 14 shall be construed accordingly.
- b) Performance of the contract shall continue during any arbitration proceedings pursuant to above clause unless the employer shall order the suspension thereof pursuant to GCC clause 13
- c) Upon every or any such reference, the cost of and incidental to the reference and award respectively shall be on the direction of the Sole Arbitrator so appointed who may determine the amount thereof or direct the same as between party & parties by whom and in what manner the same is to be borne and paid.
- d) The place of arbitration shall be Delhi and the language of the arbitration shall be English.
- e) The parties agree that any arbitration award shall be final and binding upon the parties (to the fullest extent permitted by applicable Jaw) and the parties waive their right to any form of appeal or other similar recourse to a court or law.



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f) The arbitration will take place before a Sole arbitrator who shall be nominated by Mr. N.P. Gupta, Chairman of Desein Private Limited, Desein House, Greater Kailash-11, New Delhi 110048.”

3. It is clear, from a reading of Clauses 13.5 and 14 of the GCC that, before issuing any notice invoking arbitration, an attempt at a reasonable and equitable resolution of the dispute has to be made between the Contractor and the Employer’s Project Incharge/Engineer.

4. Mr. Bipin Kumar Prabhat, learned Counsel for the petitioner, candidly acknowledges that the petitioner has never approached the Employer’s Project Incharge/Engineer.

5. In those circumstances, this petition is premature.

6. Mr. Prabhat seeks leave to withdraw this petition with liberty to reapproach the Court after following the pre-arbitral protocol envisaged by Clauses 13.5 and 14 of the GCC.

7. Leave and liberty is granted as aforesaid.

8. The petition is disposed of as aforesaid.

C. HARI SHANKAR, J

AUGUST 12, 2024/dsn

[Click here to check corrigendum, if any](#)