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

\+ **ARB.P. 658/2024**

UNIQUE AVIATION SERVICES PRIVATE LIMITED..... Petitioner

Through: Mr. Bhaskar Tiwari Advocate, Mr Mukul Bawa Advocate, Mr Ramakant Shukla Advocate (M- 9582158748)

versus

THE DIRECTORATE OF ENGINEERING H ..... Respondent

Through: Mr. Amit Tiwari, CGSC with Mr. Vedansh Anand, G.P. (M-8527271621)

CORAM:
JUSTICE PRATHIBA M. SINGH

<u>O R D E R</u>

% **28.05.2024**

1. This hearing has been done through hybrid mode.

2. The present petition has been filed by the Petitioner – Unique Aviation Services Private Limited, under Section 11(6) of the Arbitration and Conciliation Act, 1996 (hereinafter, '*the Act*') seeking appointment of Arbitrator for adjudication of disputes. The dispute in the present matter arises out of contract dated 30th January, 2020, executed between the parties herein for repair and overhaul of 9 numbers of SAFIR 5 K/G MI Auxiliary Power Unit (APU) installed on MI-17 V5 helicopters for a total consideration of Rs. 60,00,000.00/- per unit. It is stated that several negotiations had taken place between the parties with regard to the amount and validity of the offer for the work, before the contract was finalised.

3. It is averred that the Petitioner and the representative of the OEM

carried out and completed Pre-Dispatch Inspection (PDI) of the Auxiliary Power Unit (APU) in February 2020. On 1st October, 2020 the Respondent conveyed its permission to collect 9 numbers of APUs from 31 MCU. It is stated that despite the completion of pre-dispatch inspection in February 2020, delays occurred in the delivery of the Auxiliary Power Units to OEMs due to the COVID-19 pandemic, leading to requests for delivery period extensions and renegotiation of contract terms. The Petitioner further requested the Respondent not to levy liquidated damages. The Petitioner highlighted the impact of *force majeure* and foreign exchange fluctuations, and the Respondent eventually agreed to some extensions but also imposed liquidated damages and deducted amounts which were not agreed upon by the Petitioner, causing financial distress for the Petitioner. The Petitioner subsequently delivered 3 Auxiliary Power Units as per packing list of the OEM on16th March, 2021 and raised its invoice dated 7th April, 2021 for an amount of Rs 1,97,23,305.00/- in view of Foreign Currency Fluctuation.

4. It is further stated that the Petitioner, with great difficulty, was able to deliver the second lot of 3 Auxiliary Power Unit, which was ready with the OEM, on 14th October, 2021. It is then stated that the Respondent after repeated requests released the payment.

5. It is averred that continuous communication took place between the Petitioner and the Respondent with regard to the delivery of the units and payments for the same. The final batch of overhauled Auxiliary Power Units were stated to be delivered on 25th May, 2022. Thereafter, the Petitioner raised an invoice for Rs. 2,06,02,185.00/-, however received only Rs. 1,73,62,185.00/- .

6. The Petitioner in the petition contends that the Respondent's actions,

including the imposition of liquidated damages and delayed payments, were unjustified given the circumstances of the pandemic and prior assurances of leniency. Multiple communications and meetings were held to resolve these issues, but the Respondent's actions, including deductions for liquidated damages and withholding of payments, persisted. The Petitioner also sought a waiver of liquidated damages and payment clarifications, asserting that delays were primarily due to external factors and the respondent's delays in granting necessary approvals and payments. However, the Respondent is stated to have not considered the requests of the Petitioner. The Petitioner sent notice dated 6th October, 2023 serving notice of invocation of arbitration, to which the Respondent is stated to have replied on 11th December, 2023. Accordingly, the Petitioner has filed the present petition.

7. The arbitration clauses in the contract read as under:

> ***"Arbitration***.
>
> *(a) All disputes or differences arising out of or in connection with the present contract including the one connected with the validity of the present contract or any part thereof should be settled by bilateral discussions.*
>
> *(b) Any dispute, disagreement or question arising out of or relating to the Contract of relating to construction or performance which cannot be settled amicably may be resolved through arbitration. The standard clause of arbitration is as per Forms DPM-7, DPM-8 and DPM-9.*
>
> ***Format of Arbitration Clause - indigenous Private bidders***
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> *(i) All disputes or differences arising out of or in connection with the present contract including the one connected with the validity of the present contract or any part thereof, should be settled by bilateral*

discussions.

(ii) <u>Any dispute, disagreement of question arising out of or relating to this contract or relating to construction or performance (except as to any matter the decision or determination whereof is provided for by these conditions), which cannot be settled amicably, shall within sixty (60) days or such longer period as may be mutually agreed upon, from the date on which either party informs the other in writing by a notice that such dispute, disagreement or question exists, will be referred to a sole Arbitrator</u>.

(iii) Within sixty (60) days of the receipt of the said notice, an arbitrator shall be nominated in writing by the authority agreed upon by the parties.

(iv) The sole Arbitrator shall have its seat in New Delhi or such other place in India as may be mutually agreed to between the parties.

(v) The arbitration proceedings shall be conducted under the Indian Arbitration and Conciliation Act, 1996 and the award of such Arbitration Tribunal shall be enforceable in Indian Courts only.

(vi) Each party shall bear its own cost of preparing and presenting its case. The cost of arbitration including the fees and expenses shall be shared equally by the parties, unless otherwise awarded by the sole arbitrator.

(vii) The parties shall continue to perform their respective obligations under this contract during the pendency of the arbitration proceedings except in so far as such obligations are the subject matter of the said arbitration proceedings.

(Note - In the event of the parties deciding to refer the dispute/s for adjudication to an Arbitral Tribunal then one arbitrator each will be appointed by each party and the case will be referred to the Indian Council of Arbitration (ICADR) for nomination of the third arbitrator. The fees of the arbitrator appointed by the parties shall be borne by each party and the fees of the

third arbitrator, if appointed, shall be equally shared by the buyer and seller)"

8. In terms of the above clauses, ***Mr. V. K. Maheshwari, Retd. District Judge (M: 9910384671)*** is appointed as the ld. Arbitrator to adjudicate the disputes between the parties.

9. With the consent of parties, the matter is referred to the India International Arbitration Centre (IIAC). Parties to appear before the IIAC on 12th July, 2024. The details of the IIAC are as under:

> ***Address: India International Arbitration Centre, Plot No. 6, Institutional Area, Vasant Kunj, New Delhi - 110070.***

10. The fees of the Arbitrator shall be as per the Fourth Schedule to the Act. A copy of this order be communicated to the Registrar, IIAC at M: ***+91 9810759224*** and email: registrar@indiaiac.org.

11. Petition is disposed of with all pending applications, if any.

PRATHIBA M. SINGH, J.

MAY 28, 2024
Rahul/bh