



2024:DHC:9381



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

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Date of Decision : 02.12.2024+ **ARB.P. 682/2024****MAHAVIR TRANSMISSION LIMITED**

.....Petitioner

Through: Mr. Harshit Agarwal and Mr. Prakhar
Aditya, Advs.

versus

BALAJI TRADERS

.....Respondent

Through: Mr. Rishabh Kapoor, Adv.

CORAM:**HON'BLE MR. JUSTICE SACHIN DATTA****SACHIN DATTA, J. (Oral)**

1. The present petition under Section 11(6) of the Arbitration and Conciliation Act, 1996 (hereinafter '*the A&C Act*') seeks constitution of an Arbitral Tribunal to adjudicate the disputes that have arisen between the parties pursuant to a Purchase Order bearing no. SKB/PO-RM/2324/0576 dated 14.10.2023 executed between the Parties (hereinafter referred as '*the purchase order*').

2. The Arbitration Agreement incorporated in the PO reads as under:-

"15. If any dispute arise between the parties shall be referred to Arbitration as per provisions of the Arbitration & Conciliation Act, seat of Arbitration shall be at New Delhi. All disputes subject to the New Delhi Jurisdiction only."

3. The said purchase order was executed for the purpose of supply of 50 MT of 'fuel oil' at the rate of Rs. 45.25/-per kg. It is the case of the petitioner that after the delivery of the said fuel oil, a sample of the same was sent for testing and it was found that the same not was combustible, and



hence, it was not usable. It is submitted that on further examination, it was also found that the said fuel oil contains some small rubber particles. It is contended that the supply was therefore, defective. It is averred that on a previous occasion as well, the respondent had made defective supplies to the petitioner.

4. Consequently, the petitioner requested the respondent to lift back the supplied fuel oil. Upon failure on the part of the respondent to do so, a legal notice dated 26.12.2023 was sent by the petitioner to the respondent.

5. In these circumstances, disputes arose between the parties. Thereafter, an FIR bearing no. 0069/2024 is stated to have been lodged by the petitioner against the respondent, registered at Chhata Police Station on 25.02.2024

6. Finally, the petitioner invoked the abovesaid arbitration clause contained in the purchase order and sent an invocation notice dated 29.02.2024. The said notice was not responded to by the respondent. In the aforesaid circumstances, the present petition has been filed seeking appointment of an independent Sole Arbitrator to adjudicate the disputes between the parties.

7. Learned counsel for the respondent does not dispute the existence of the arbitration agreement. Although he strongly refutes the contentions raised by the petitioner on the merits of the matter, he accedes to an independent Sole Arbitrator being appointed by this Court for adjudication of the disputes between the parties. Further, it is stated that the respondent reserves the right to raise appropriate counter-claims against the petitioner in the arbitration proceedings.

8. Consequently, since there is no controversy as regards the existence of the arbitration agreement, there is no impediment to constituting an



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arbitral tribunal to adjudicate the disputes between the parties, in terms of the legal position as set out in *Interplay between Arbitration Agreements under the Arbitration & Conciliation Act, 1996 & the Indian Stamp Act, 1899, In re*, 2023 SCC OnLine SC 1666 and *SBI General Insurance Co. Ltd. v. Krish Spinning*, 2024 INSC 532.

9. Accordingly, Mr. Vinay Yadav, Advocate (Mob.No. +91 8447735510) is appointed as the Sole Arbitrator to adjudicate the disputes between the parties.

10. The learned Sole Arbitrator may proceed with the arbitration proceedings subject to furnishing to the parties the requisite disclosure as required under Section 12 of the A&C Act.

11. At request of respective counsel, it is directed that the arbitration shall take place under the aegis of and as per the rules of the Delhi International Arbitration Centre (DIAC).

12. All rights and contentions of the parties in relation to the claims/counter claims are kept open, to be decided by the learned Sole Arbitrator on their merits, in accordance with law.

13. Needless to say, nothing in this order shall be construed as an expression of opinion of this Court on the merits of the case.

14. The present petition stands disposed of in the above terms.

SACHIN DATTA, J

DECEMBER 2, 2024/at