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

+ ARB.P. 761/2023

DHARAMBIR SANDHU

..... Petitioner

Through: Mr. Amit Dubey, Advocate.

versus

UNION OF INDIA THROUGH GENERAL MANAGER,

NORTHERN RAILWAYS AND ANR.

..... Respondents

Through: Mr. Arnav Kumar, CGSC with Mr.
Chetanya Kapoor, Advocate for UOI.

CORAM:

HON'BLE MR. JUSTICE PRATEEK JALAN

ORDER

14.02.2024

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1. By way of this petition under Section 11 of the Arbitration and Conciliation Act, 1996 [“the Act”], the petitioner seeks appointment of an arbitrator to adjudicate disputes between the parties under a Letter of Acceptance dated 04.02.2019, by which the Union of India [“UOI”] awarded a contract for work to be done, on certain spans of T-Beam Slab and bridges, to the petitioner.

2. The contract admittedly contains an arbitration clause [Clause 64 of the General Conditions of Contract], which provides for resolution of disputes by arbitration of a three-member arbitral tribunal.

3. Disputes having arisen between the parties, the arbitration clause was invoked by the petitioner through counsel’s communication dated 12.06.2023. No reply was received to the invocation letter prior to the petitioner approaching this Court under Section 11 of the Act. However, the



respondent has placed on record a letter dated 28.07.2023, by which the petitioner's request was declined on account of a "No Claim Certificate" signed by the petitioner.

4. Pursuant to notice issued on 04.08.2023, Mr. Arnav Kumar, learned Central Government Standing Counsel, enters appearance on behalf of the respondent.

5. The existence of the arbitration agreement, and due invocation thereof are not denied by the respondent. However, the respondent resists the appointment of an arbitrator on the ground that the disputes are not arbitrable for two reasons:

- a. that the claims have been discharged by accord and satisfaction by issuance of the "No Claim Certificate";
- b. that upon issuance of a "No Claim Certificate", the matter is excepted from the scope of arbitration.

6. For this purpose Mr. Kumar relies upon a document annexed at page 29 of the reply filed by him. The document, signed by the petitioner, states that the petitioner has no outstanding claims under the contract.

7. Mr. Amit Dubey, learned counsel for the petitioner, on the other hand, submits that the said "No Claim Certificate" was signed as a contractual pre-condition for the release of the final bill and security deposit. He thus takes a plea of economic duress.

8. At the Section 11 stage, the Court is not called upon to examine the issues arising in this context in great detail. The judgments of the Supreme Court in *Vidya Drolia v. Durga Trading Corpn.* [(2021) 2 SCC 1], *NTPC Ltd. v. SPML Infra Ltd.*, [(2023) 9 SCC 385] and a recent judgment of a seven Judge Bench of the Supreme Court dated 13.12.2023 in *In Re:*



Interplay Between Arbitration Agreements under the Arbitration and Conciliation Act, 1996 and the Indian Stamp Act, 1899 [Curative Petition (C) No. 44/2023 and connected matters], circumscribe the scope of scrutiny at the pre-reference stage. In *NTPC*, the Supreme Court has emphasised that the general rule is for issues of arbitrability to be left for determination of the arbitral tribunal. The referral court has a role to play in excluding claims which are *ex-facie* non-arbitrable, so as to obviate the expense of resources in arbitration proceedings. However, such a decision can be made only as a demurrer and where the claims are “manifestly and *ex-facie* non-arbitrable”. The Supreme Court has characterised this scrutiny as one undertaken “through the eye of the needle”, obviously to be exercised in rare cases.

9. Having regard to the submissions recorded above, I am of the view that the present case does not meet the high threshold upon which the Court would reject the petitioner’s claims at this preliminary stage. It would be appropriate to appoint an arbitrator, leaving all issues, including those of arbitrability, open for determination by the chosen tribunal.

10. Mr. Kumar submits that although the arbitration clause provides for a three-member arbitral tribunal to be chosen from the panel of the Railways, the respondent is agreeable to arbitration of a sole arbitrator, chosen from its panel.

11. Mr. Amit Dubey, learned counsel for the petitioner, has no objection to this proposal. A copy of the panel has been handed over by Mr. Kumar to Mr. Dubey. Mr. Dubey submits that disputes may be referred to the arbitration of Mr. Bhuvnesh P. Khare (IRSE), former General Manager, Diesel, Locomotive Works, Varanasi [Tel:- 7042300388, Email:- bpkhare@gmail.com]. It is so ordered.



12. With the consent of learned counsel for the parties, it is also directed that the arbitration will be conducted under the aegis of Delhi International Arbitration Centre, Shershah Road, New Delhi-110503 [“DIAC”], and will be subject to Rules of DIAC, including as to remuneration of the learned arbitrator.

13. The learned arbitrator is requested to furnish a declaration in terms of Section 12 of the Act, prior to entering upon the reference.

14. It is reiterated that all rights and contentions of the parties, including with regard to the arbitrability of the disputes, may be agitated before the learned arbitrator.

PRATEEK JALAN, J

FEBRUARY 14, 2024

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