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

+ **ARB.P. 764/2023**

M/S SHIV AND SONS

..... Petitioners

Through: Mr.Akshat Bajpai, Ms. Ishanee
Sharma, Mr. Shobit Trehan, Ms.
Renuka Parmanand, Advs.

versus

**INDIAN RAILWAY CATERING AND TOURISM
CORPORATION(IRCTC)**

..... Respondent

Through: Mr. Akshay Verma, Adv.

CORAM:

HON'BLE MR. JUSTICE DINESH KUMAR SHARMA

ORDER

24.01.2024

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1. By way of the present petition filed under Section 11(5) of the Arbitration and Conciliation Act, 1996 (hereinafter, referred to as the 'A&C Act'), the petitioner seeks appointment of Arbitral Tribunal comprising of a Sole Arbitrator to adjudicate the disputes between the parties.
2. Learned counsel for the petitioner the disputes have arisen out of the tender document dated 22.02.2021, which provides that disputes with respect to the agreement shall be resolved through arbitration as per provisions of A & C Act. The agreement contains an arbitration clause (clause 5) which says any dispute arising out of or in connection shall be referred to arbitration with the venue at Delhi.
3. Disputes having arisen between the parties, the petitioner invoked



arbitration vide notice dated 14.07.2023 issued under Section 21 of the A & C Act.

4. Learned counsel for the respondent submits that though he has filed the reply. However, the same is not on the record.
5. Let the same be brought on the record.
6. However, learned counsel for the respondent further submits that there is no arbitrable dispute in view of the clause-3 and 3.4 of the tender document.
7. The enquiry under Section 11 is very limited in nature. The court is only required to see whether there is an arbitration agreement and an arbitrable dispute between the parties. The court is also required to see whether the arbitration has been invoked as required under Section 21 of the Arbitration and Conciliation Act.
8. The scope of enquiry under Section 11 has been inter-alia held in the judgment *M/S Duro Felguera, S.A. vs Gangavaram Port Limited (2017) 9 SCC 729* wherein the court inter-alia held as under:

“The scope of the power under Section 11 (6) of the 1996 Act was considerably wide in view of the decisions in SBP and Co. (supra) and Boghara Polyfab (supra). This position continued till the amendment brought about in 2015. After the amendment, all that the Courts need to see is whether an arbitration agreement exists - nothing more, nothing less. The legislative policy and purpose is essentially to minimize the Court’s intervention at the stage of appointing the arbitrator and this intention as incorporated in Section 11 (6A) ought to be respected.”

9. Considering that both the parties have consented to the reference to the arbitral tribunal, the present petition is disposed of with the



following directions:

- i) The disputes between the parties under the said agreement are referred to the arbitral tribunal.
- ii) As agreed by both the counsels for the parties, matter is referred to DIAC to appoint an Arbitrator to adjudicate the disputes between the parties.
- iii) 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 Schedule IV of the A&C Act or as the parties may agree.
- iv) The learned Arbitrator is requested to furnish a declaration in terms of Section 12 of the Act prior to entering into the reference.
- v) 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 on merits of the dispute of either of the parties, are left open for adjudication by the learned arbitrator.
- vi) The parties shall approach the learned arbitrator within two weeks from today.

10. The petition is disposed of in the above terms.

DINESH KUMAR SHARMA, J

JANUARY 24, 2024

Pallavi