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

+ **ARB.P. 700/2024**

M S SWASTIK BOOT FACTORY

.....Petitioner

Through: Mr. S.S. Pandey and Mr. Prashant
Negi, Advs.

versus

UNION OF INDIA THROUGH & ORS.

.....Respondent

Through: Mr. Sushil Kumar Pandey, SPC and
Ms. Neha Yadav, Adv.
Mr. Vedansh Anand, Central Gov.
Pleader.

CORAM:

HON'BLE MR. JUSTICE JASMEET SINGH

ORDER

08.08.2024

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1. This is a petition filed under Section 11(6) of the Arbitration and Conciliation Act, 1996 seeking appointment of the Sole Arbitrator to adjudicate the disputes between the parties.
2. The respondent place an order for supply of 40,000 shoes upon the petitioner and entered into a Contract dated 15.07.2022.
3. It is alleged that since the petitioner could not supply the shoes on time, the respondent terminated the said Contract *vide* Letter dated 13.06.2023.
4. The arbitration clause is contained in Defence Procurement Manual, 2009 which governs the parties for Arbitration. Clause 7.11 and Clause 10.11.1 of DPM reads as under:-

“7.11 Arbitration

7.11.1 Arbitration: If a dispute arises between the Purchaser and



the Supplier and it does not get resolved through mutual discussions, the parties may agree for arbitration. MOD/CFAs should prepare a panel of arbitrators for selection by the Defence Secretary /CFA's who appoint an arbitrator, whose decisions taken after due consideration of factors brought out by both parties are considered final. The option of approaching Ministry of Law for appointment of Arbitrator can also be exercised. Services Headquarters have the power to appoint Arbitrators within their delegated financial powers. The standard Arbitration clauses are given in Forms DPM-7, DPM-8 and DPM-9.

7.11.2 Appointment of Arbitrators through Court: There may be situations when either party approaches a court of law for appointing an independent arbitrator. Purchase officers must consult the Legal Advisor (Defence) and Government counsel in all cases of arbitration.

10.11.1 Arbitration: As mentioned in paragraph 7.11.1 of this Manual, parties to a contract may opt for arbitration if any dispute arising between them does not get resolved through mutual discussion. The standard format of the Arbitration clause to be included in the RFP and the contract is given in Form DPM-8. It may be noted that there is a Slight difference in the .formats to be used for indigenous and foreign contracts.”

5. Since there were disputes between the parties, the petitioner invoked arbitration *vide* Legal Notice dated 29.09.2023.
6. Mr. Pandey, learned counsel for the respondent states that some goods were supplied and remaining goods were sought to be supplied post termination of the contract.
7. Learned counsel for the respondent relied on the judgment of this Court in ***A.N. Traders (P) Ltd. v. Shriram Distribution Services (P) Ltd.,***



2018 SCC OnLine Del 12416.

8. I am of the view that these are all issues which the Arbitral Tribunal shall decide, since the arbitration clause is admitted.

9. Learned counsel for the respondent relied on the judgment of this Court in *A.N. Traders (P) Ltd. v. Shriram Distribution Services (P) Ltd.*, ***2018 SCC OnLine Del 12416.***`

10. is not applicable to the facts of the case as the same was under Section 34 of the Arbitration and Conciliation Act, 1996 after the arbitrator had considered and adjudicating the objection regarding the claims being beyond the terms of the contract. That stage has not arrived in the present petition.

11. The respondent is at liberty to raise this objection before the arbitral tribunal which shall adjudicate the same.

12. For the said reasons, the petition is allowed. Since the parties are still having disputes between them, the following directions are issued:-

i) Mr. J.R. Aryan, (Retd. District Judge) (Mob. No. 9958697034) is appointed as a Sole Arbitrator to adjudicate the disputes between the parties.

ii) 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 the Fourth Schedule of the Arbitration & Conciliation Act, 1996.

iii) The learned Arbitrator is requested to furnish a declaration in terms of Section 12 of the Act prior to entering into the reference.

iv) 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/counter-claims and merits of the dispute of either of the parties, are left open for adjudication by the learned arbitrator.

v) The parties shall approach the learned Arbitrator within two weeks from today.

13. The claims, counter claims and disputes are left open to be adjudicated by the sole arbitrator.

JASMEET SINGH, J

AUGUST 8, 2024/NG

Click here to check corrigendum, if any