



2024:DHC:6826



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**+ **ARB.P. 705/2024****KINSHUK GOEL PROP. M/S GANESHA
INTERNATIONAL**

.....Petitioner

Through: Mr. Vibor Garg and Ms.
Anshika Maheshwari, Advocates

versus

**MINISTRY OF DEFENCE, GOVERNMENT OF INDIA
THROUGH DIRECTORATE GENERAL OF ORDNANCE
SERVICES**

.....Respondent

Through: Mr. Vikram Jetly, CGSC with Ms.
Shreya Jetly, Advs. & Mr. Vivek Nagar, GP**CORAM:****HON'BLE MR. JUSTICE C.HARI SHANKAR****JUDGMENT (ORAL)****04.09.2024**

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1. This is a petition filed under Section 11(6) of the Arbitration and Conciliation Act, 1996¹, for reference of the disputes between the parties to arbitration.

2. Mr. Jetly, learned Central Government Standing Counsel submits that the only substantial ground that the respondent is raising is that the claims of the petitioner are barred by time. He, however, fairly acknowledges that this ground may not be available to the respondent under Section 11(6) of the 1996 Act in view of the recent enunciation of law in *SBI General Insurance Co Ltd v Krish Spinning*², but prays that the respondent may be permitted to raise the

¹ "the 1996 Act", hereinafter

² 2024 SCC OnLine SC 1754



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issue before the Arbitral Tribunal.

3. The dispute arises in the context of a Supply Order dated 18 March 2016 which envisages resolution of disputes between the parties by arbitration. The arbitration clause in the Supply Order reads thus

“3. **Arbitration.** All disputes or differences arising out of or in connection with the Supply Order shall be settled by bilateral discussions. Any dispute, disagreement or question arising out of or relating to the Supply Order or relating to construction of performance, which cannot be settled amicably, may be resolved through arbitration. The Arbitration is as per Form DPM-7 and DPM-8 (Available in MoD website and can be provided on request). Defence Secretary/Additional Secretary/CFA will be appointing authority for appointment of Arbitrator to decide the dispute.”

4. Though the arbitration clause envisages appointment of the Arbitrator by the Defence Secretary/Additional Secretary/CFA, that covenant cannot be operated in view of Section 12(5) of the 1996 Act read with the judgments of the Supreme Court in *Perkins Eastman Architects DPC v HSCC (India) Ltd*³, *Bharat Broadband Network Ltd v United Telecoms Ltd*⁴ and *Haryana Space Application Centre (HARSAC) v Pan India Consultants Pvt Ltd*⁵.

5. The petitioner invoked arbitration by notice dated 12 March 2024 issued under Section 21 of the 1996 Act. The principal amount claimed by the petitioner against the respondent is in the region of ₹ 9.25 crores, though, Mr. Garg submits that, with interest, the total

³ (2020) 20 SCC 760

⁴ (2019) 5 SCC 755

⁵ (2021) 3 SCC 103



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claim may work out to approximately ₹16 crores.

6. As the respondent did not reply to the Section 21 notice issued by the petitioner, this Court is compelled to exercise jurisdiction under Section 11 (6) of the 1996 Act and appoint an Arbitrator.

7. Accordingly, the disputes stand referred to arbitration. This Court appoints Ms Manisha Singh, Advocate (Tel. 9167255410) to arbitrate on the disputes between the parties.

8. The fees of the Arbitrator shall be settled by the Arbitrator in consultation with the parties.

9. The Arbitrator is also requested to file the requisite disclosure under Section 12(2) of the 1996 Act within a week of entering on reference.

10. All questions of fact and law, including preliminary objections as well as objections on merits, which would also include the submission of the respondent that the petitioner's claims are barred by time, shall remain open to be agitated before the Arbitrator.

11. The petition stands allowed in the aforesaid terms.

C. HARI SHANKAR, J.

SEPTEMBER 4, 2024/yg

Click here to check corrigendum, if any