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

+ **ARB.P. 774/2023**

INLAND WATERWAYS AUTHORITY OF INDIA Petitioner

Through: Mr. AP Singh, Ms. Namruta Sharma,
Ms. Shrinkhla Tiwari, Ms. Namrat, Mr. Sanjeev
Kumar, Advs.

versus

M/S HALDIA NIRMAN PROJECTS PVT. LTD. Respondent

Through: Mr. Ajay Bhargava, Mr. Milind Jain,
Advs.

Mr. Sarbendra Kumar, Adv.

CORAM:

HON'BLE MR. JUSTICE JASMEET SINGH

ORDER

% **25.01.2024**

1. This is a petition filed under Section 11(5) of the Arbitration and Conciliation Act, 1996 seeking appointment of an Arbitrator.
2. The facts are that the petitioner issued a Notice Inviting Tender (NIT) dated 25.11.2016 for the purpose of "Bare boat chartering of Six self-propelled inland cargo vessels (5 vessels of 300 MT and 1 vessel of 600 MT)" for the period of 2 years.
3. The respondent submitted its bid on 06.01.2017 and since it was accepted by the petitioner, a work order/letter of allotment dated 12.07.2017 was issued to the respondent for M.V. Rajagopalachari.
4. A contract agreement was also executed between the parties on 26.10.2017.
5. Since it is alleged that the respondent failed to comply with its obligations as inscribed in contract causing delays and disputes, the petitioner invoked Arbitration Clause, being Clause No. 46 of the Terms and Conditions of NIT dated 25.11.2016.
6. In this view of the matter, the present petition has been filed.



7. On 07.08.2023, this Court was pleased to issue notice in the petition.
8. The learned counsel for the respondent appeared on 28.11.2023 and sought 2 weeks to file a reply. No reply has been filed till date.
9. For the said reasons, I am inclined to allow the petition and appoint an arbitrator.
10. Paragraphs 46 and 47 of the NIT dated 25.11.2016 read as under:-

“46. Arbitration

In the event of any dispute between the Charterer and the Authority in connection with or arising out of the Agreement between the parties, the same shall be referred to Arbitration as per the Arbitration and conciliation Act, 1996 as amended up to date for adjudication of the disputes. The Award of the Arbitrator(s) shall be final and binding on both parties including any notification or alteration. The arbitration shall be held in the city of Delhi under the jurisdiction of Delhi High Court.

47. Jurisdiction

All disputes in connection with and arising out of the agreement between the parties shall be resolved within the jurisdiction of the Hon'ble High Court at Kolkata. Both the Charterer and the Authority shall give a specific confirmation to this effect in the written agreement to be signed between the parties.”

11. Mr. AP Singh, learned counsel for the petitioner relies upon paragraphs 32 and 33 of “**Reliance Infrastructure Limited vs. Madhyanchal Vidyut Vitran Nigam Limited**” [(2023) SSC OnLine Del 4894] to canvass the proposition that it will be the courts at Delhi which will have jurisdiction in the matter arising out of the arbitration proceedings as



per NIT dated 25.11.2016. The same reads as under:-

“32. On a conspectus of the aforesaid judgments, the position of law that emerges is that when the contract contains an arbitration clause that specifies a “venue”, thereby anchoring the arbitral proceedings thereto, then the said “venue” is really the “seat” of arbitration. In such a situation the courts having supervisory jurisdiction over the said “seat” shall exercise supervisory jurisdiction over the arbitral process, notwithstanding that the contract contains a clause seeking to confer “exclusive jurisdiction” on a different court.

33. In the present case, the relevant clause in the LOA purporting to confer “exclusive jurisdiction” is a generic clause, and does not specifically refer to arbitration proceedings. For this reason, the same also does not serve as a “contrary indicia” to suggest that that Delhi is merely the “venue” and not the “seat” of Arbitration. As such, the same cannot be construed or applied so as to denude the jurisdiction of the Courts having jurisdiction over the “seat” of Arbitration.”

12. Hence, in view of the above, there is no contradiction between Clause 46 and 47 of the contract. Since the seat of arbitration has been agreed to be at Delhi, this Court would have jurisdiction to entertain and try this petition.

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

- i) Mr. Rahul Krishna, Adv. (Mob. No. 9810225882) 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 on 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.

14. The petition is disposed of in the aforesaid terms.

JASMEET SINGH, J

JANUARY 25, 2024 / (dm/ MS)

Click here to check corrigendum, if any