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

+ ARB.P. 829/2023

S. S. CONSTRUCTION

..... Petitioner

Through: Ms. Tanu Singhal, Advocate.
[M:-9999739937]

versus

G. E. T AND D INDIA LTD. & ANR.

..... Respondents

Through: Mr. Abhijeet Swaroop, Advocate for
R-1.
Mr. Manish Kr. Srivastava, Mr.
Moksh Arora, Mr. Santosh Ramdurg
& Mr. Yash Srivastava, Advocates for
R-2.

CORAM:

HON'BLE MR. JUSTICE PRATEEK JALAN

ORDER

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16.01.2024

1. The petitioner has filed this petition under Section 11 of the Arbitration and Conciliation Act, 1996 [“the Act”], seeking appointment of an arbitrator to adjudicate disputes which have arisen between the parties under various purchase orders. The purchase orders are subject to an arbitration clause contained in Article 40 of the General Conditions of Contract [“GCC”], as modified by the Particular Conditions of Contract [“PCC”].

2. At the outset, Ms. Tanu Singhal, learned counsel for the petitioner, states that respondent No. 2-Tata Power Delhi Distribution Limited was not



a party to the contract and may be deleted from the array of parties. The request is accepted and respondent No. 2 is deleted from the array of parties.

3. As far as respondent No. 1 is concerned, Ms. Singhal submits that the petitioner has invoked arbitration by a legal notice dated 29.03.2023. Respondent No. 1 replied to the notice on 01.05.2023 and sought discussions for resolving the quantum of disputes. However, the parties were unable to arrive at a consensus, as a result of which the present petition has been filed.

4. Notice was issued in the petition on 04.09.2023 and time was granted to the respondents to file replies. Respondent No. 1 has not yet filed a reply and further time is sought for this purpose. Mr. Abhijeet Swaroop, learned counsel for the respondent No. 1 does not dispute the existence of the arbitration clause, but only submits that the disputes enumerated in the petition fall beyond the scope of the clause and that the petitioner has not undertaken the conciliation proceedings provided in the agreement. Having regard to the nature of these objections, I do not consider it necessary to await the filing of the reply.

5. As far as the nature of disputes urged by the petitioner are concerned, those are enumerated in a list of claims at pages 13-14 of the petition. They include payments on account of running account bills, refund of reductions in amounts paid, payment for extra items, compensation for suspension of work, revision of rates, loss of overheads and profits, compensation for prolongation and payment of final bills, interest and costs. These claims cannot *prima facie* be said to be entirely outside the scope of arbitration.

6. With regard to respondent No. 1's argument regarding conciliation proceedings, it may be noted that no such request was made in response to



the invocation of arbitration. In any event, learned counsel for the parties agreed that a reference to mediation may be made in these proceedings so that they can make an attempt to resolve their disputes amongst themselves.

7. Having heard learned counsel for the parties, for the reasons aforesaid, I am of the view that it would be appropriate to appoint an arbitrator, who can enter into the reference after giving the parties an opportunity to settle their disputes in mediation. All defences raised by respondent No. 1 can also be reserved for adjudication by the learned arbitrator.

8. Clause 40.6 of the PCC contemplates arbitration by a sole arbitrator, under the rules of arbitration of the Delhi International Arbitration Centre or the Singapore International Arbitration Centre or the London Court of International Arbitration or International Chamber of Commerce International Court of Arbitration. The choice of institution for arbitration has been left to the parties for a mutual decision. New Delhi has been designated as the place of arbitration and the courts in New Delhi have also vested with exclusive jurisdiction over the award.

9. Learned counsel for the petitioner and respondent No. 1 agree that the arbitration be held under the aegis of Delhi International Arbitration Centre, High Court of Delhi, Shershah Road, New Delhi-110503 [“DIAC”], and subject to its rules.

10. The petition is therefore disposed of with the following directions:

- a. The parties are referred to mediation under the aegis of *Samadhan*, Delhi High Court Mediation and Conciliation Centre, Shershah Road, New Delhi-110503. The petitioner and respondent No. 1 will appear before the mediator on 29.01.2024.



- b. In the event, the mediation proceedings are unsuccessful, the disputes will be resolved by the arbitration of Hon'ble Ms. Justice Asha Menon [Tel:-9910384664], former Judge of this Court. The arbitration will be held under the aegis of DIAC and subject to the rules of arbitration of DIAC, including as to the remuneration of the learned arbitrator.
 - c. The learned arbitrator is requested to furnish a declaration in terms of Section 12 of the Act prior to entering upon the reference.
 - d. DIAC and the learned arbitrator are requested to defer the arbitral proceedings for a period of two months from today to enable the parties to settle their disputes in mediation. They may approach the learned arbitrator jointly, if any further time is required.
11. It is made clear that this Court has not finally adjudicated upon the maintainability or the merits of the claims sought to be raised by the petitioner. All claims and counter claims of the parties, and defences thereto, may be raised before the learned arbitrator.
12. The petition stands disposed of with these directions.

PRATEEK JALAN, J

JANUARY 16, 2024

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