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

+ ARB.P. 831/2023

JOHNSON LIFTS PRIVATE LIMITED Petitioner

Through: Mr. Mayank Mikhail Mukherjee,
Advocate.

versus

TDI INFRASTRUCTURE LIMITED Respondent

Through: Mr. Nishchit Rawat, Advocate.

CORAM:

HON'BLE MR. JUSTICE PRATEEK JALAN

ORDER

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24.01.2024

1. By way of the present petition filed under Section 11(6) of the Arbitration and Conciliation Act, 1996, [“the Act”], the petitioner seeks appointment of an Arbitral Tribunal comprising of a Sole Arbitrator to adjudicate the disputes between the parties.
2. Learned counsel for the petitioner submits that the parties had entered into a Work Order dated 22.03.2010, pursuant to a tender issued in August, 2008. It is submitted that the Tender contains an arbitration clause (clause 29 of the Special Conditions of the Tender) which provides that all disputes with respect to the said Tender, shall be referred to arbitration as per provisions of the Act, and further provides that the place of arbitration would be at Delhi. The said condition has also been extended to the work order.
3. Disputes having arisen between the parties, the petitioner invoked



arbitration vide notice dated 02.06.2023.

4. Mr. Nishchit Rawat, learned counsel, enters appearance on behalf of the respondent pursuant to notice issued on 16.08.2023.

5. Learned counsel for the parties jointly request that a reference may be made to mediation, so that they can make an effort to sort out the disputes *inter-se*.

6. Mr. Rawat also states that the respondent does not contest the existence of the arbitration agreement, and the disputes may be referred to arbitration if the mediation fails, leaving all rights and contentions of the parties open for adjudication by the learned Arbitrator.

7. It appears that the proceedings were pending for consideration of the question as to whether the work order has been properly stamped. In view of the fact that the Constitution Bench judgment dated 25.04.2023 of the Supreme Court in *N.N. Global Mercantile (P) Ltd. vs. Indo Unique Flame Ltd.*, (2023) 7 SCC 1, has been overruled by the Seven Judge Bench of the Supreme Court by a judgment dated 13.12.2023 in *In Re: Interplay Between the Arbitration Agreements under the Arbitration and Conciliation Act, 1996 and the Indian Stamp Act, 1899* (Curative Petition (C) No. 44/2023 and connected matters), this issue is no longer relevant for consideration at this stage and all objections with regard to stamping of the document may be taken before the learned Arbitrator.

8. Having heard learned counsel for the parties, and with their consent, the petition is 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.



- b. They will appear before the learned Mediator on 01.02.2024.
 - c. In the event the mediation proceedings are unsuccessful, the disputes between the parties will be adjudicated by arbitration under the aegis of Delhi International Arbitration Centre, Delhi High Court, Shershah Road, New Delhi [“DIAC”]. DIAC is requested to nominate an Arbitrator from its panel.
 - d. The arbitration proceedings will be governed by the Rules of DIAC, including as to remuneration of the learned Arbitrator.
 - e. The learned Arbitrator is requested to furnish a declaration under Section 12 of the Act, prior to entering upon the reference.
 - a. In order to give the parties an opportunity to settle their disputes, DIAC is requested not to take further steps in the arbitration proceedings until 15.03.2024. If the parties jointly approach DIAC for further time, the arbitration may be deferred further.
9. It is made clear that all rights and contentions of the parties on maintainability of the claims, and on merits are left open for adjudication before the learned Arbitrator.

PRATEEK JALAN, J

JANUARY 24, 2024
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