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

+ **ARB.P. 893/2023**

GI STAFFING SERVICES PRIVATE LIMITEDPetitioner

Through: **Mr. Kapil Sankhla, Ms. Fagun
Sharma, Advocates.**

versus

HAVELLS INDIA LIMITEDRespondent

Through:

CORAM:

HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

ORDER

19.12.2024

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1. The present petition has been filed under Section 11(6) of the Arbitration and Conciliation Act, 1996 by the Petitioner seeking appointment of an Arbitrator to adjudicate upon the disputes in reference to certain claims made by the Petitioner to the Respondent.

2. Material on record indicates that the Petitioner herein entered into an Agreement dated 23.11.2015 with M/s Lloyd Electric and Engineering Ltd. for providing man-power and staffing services. The said agreement contained an Arbitration Clause and the same reads as under:

“14. SETTLEMENT OF DISPUTE

14.1 Neither party shall be entitled to make any claim and or be liable to the other party whether in tort (including negligence) or in Agreement except as specifically provided in this Agreement.

14.2 Neither party hereto shall be entitled to claim any indirect, consequential or punitive damages from the other party.



14.3 The parties hereto shall endeavor to settle any disputes under this Agreement by amicable discussions failing which a Sole Arbitrator shall be appointed by the mutual consent of the parties in accordance with the provisions of Arbitration & Conciliation Act, 1996. The place of arbitration shall be at New Delhi and that the courts at Delhi shall have the exclusive jurisdiction as provided for in Clause 15 below”

3. It is stated that on 08.05.2017 M/s Lloyd Electric and Engineering Ltd. sold its consumer durable business unit to the Respondent herein. It is stated that a letter of adherence was executed between the Petitioner herein, the Respondent herein and M/s Lloyd Electric and Engineering Ltd. wherein the Petitioner accepted the Respondent as the service provider in place of M/s Lloyd Electric and Engineering Ltd. The letter of adherence is being reproduced and the same reads as under:

“LETTER OF ADHERENCE FOR CONTRACTORS

1. M / s Lloyd Electric And Engineering Limited ("LEEL"), 159, Old11a Industrial Estate, Phase III, New Dclhi-110020 had entered into an Agreement dated 25th November 2015 for Deputation Services with M/S OI Staffing Services Pvt. Ltd. ("Con tractor") for providing services for deputing personnel through its employees for LEEL OJ) contractual basis ("Agreement"). ”

2. LEEL has sold its Consumer Durables Business division to M/s Havells India Limited ('HIL'), 904, 9th Floor, Surya Kiran Building, K G Marg, Connaught Place, New Delhi- 110001 with an understanding that the Agreement shall continue in favour of HIL on the same terms and conditions as contained in the said Agreement



3. Contractor accepts HIL in the place of LEEL for providing services for deputing personnel through its employees on contractual basis, on the same terms and conditions as contained in the said Agreement with effect from 08.05.2017.

4. Contractor confirms that it has no disputes of any nature whatsoever against LEEL and has not filed any proceedings with any court or forum against LEEL.

5. HIL assumes and accepts the rights and obligations of LEEL under the said Agreement with effect from 08.05.2017 and LEEL shall continue to be liable for all obligations and liabilities of LEEL under the said Agreement prior to 08.05.2017.”

4. It is stated by the learned Counsel for the Petitioner that disputes have now arisen between the Petitioner and the Respondent regarding payment of bills and, therefore, the matter should be referred to Arbitration.

5. Learned Counsel for the Respondent vehemently opposes the present Petition by contending that there is no liability on the part of the Havels India Ltd. to any dispute which has arisen prior to 08.05.2017. He states that as far as any dispute of the Petitioner post 08.05.2017 with M/s Lloyd Electric and Engineering Ltd. is concerned, the Respondent is not liable to make any payments as the Respondent has only bought one division of M/s Lloyd Electric and Engineering Ltd. and not the whole company. Learned Counsel for the Respondent relies on the Judgments passed by the Apex Court in M. R Engineers and Contractors (P) Ltd. v. Som Datt Builders Ltd., (2009) 7 SCC 696 and in NBCC (India) Limited v. Zillion Infraprojects Private Limited, (2024) 7 SCC 174.



6. Heard the Counsels and perused the material on record.
7. The facts of the present case are undisputed. The Petitioner herein entered into an Agreement dated 23.11.2015 with M/s Lloyd Electric and Engineering Ltd. for providing man-power and staffing services. It is also not in dispute that the consumer durable unit of M/s Lloyd Electric and Engineering Ltd. has been sold to the Respondent herein. A letter of adherence was signed by the Petitioner, the Respondent and M/s Lloyd Electric and Engineering Ltd.
8. The short question which arises for consideration in the present case is as to whether the disputes between the Petitioner and the Respondent should be referred to Arbitration or not in terms of the letter of adherence entered into between the parties.
9. The Judgments relied on by the learned Counsel for the Respondent are distinguishable. In NBCC (India) Limited (supra) the NBCC had entered into a contract with the Respondent therein, however, it only referred to the arbitration agreement entered into between NBCC and Damodar Vallery Corporation and in that scenario the Apex Court held that there is no Arbitration Clause between NBCC and the Respondent therein. Similarly, in M. R Engineers (supra), the contract was entered into between the State and the contractor and the contract was sub-contracted to the Respondent therein and there was reference in the sub-contract to the arbitration clause and in that scenario the Apex Court held that that the sub-contract would not bind the contractor.
10. In SK Engineering and Construction Company India v. Bharat Heavy Electricals Ltd., **2023 SCC OnLine Del 7575**, the Apex Court has held that while construing an arbitration agreement, the Court must lean in favour of



giving effect to the arbitration agreement between the parties as the legislative object and intent of the framers of the Statute is to encourage arbitration. In Intercontinental Hotels Group (India) (P) Ltd. v. Waterline Hotels (P) Ltd., (2022) 7 SCC 662, the Apex Court has also held that “*when in doubt, do refer*” and has observed as under:

“19. At the outset, we need to state that this Court's jurisdiction to adjudicate issues at the pre-appointment stage has been the subject-matter of numerous cases before this Court as well as the High Courts. The initial interpretation provided by this Court to examine issues extensively, was recognised as being against the pro-arbitration stance envisaged by the 1996 Act. Case by case, Courts restricted themselves in occupying the space provided for the arbitrators, in line with party autonomy that has been reiterated by this Court in Vidya Drolia v. Durga Trading Corpn. [Vidya Drolia v. Durga Trading Corpn., (2021) 2 SCC 1 : (2021) 1 SCC (Civ) 549] , which clearly expounds that Courts had very limited jurisdiction under Section 11(6) of the Act. Courts are to take a “prima facie” view, as explained therein, on issues relating to existence of the arbitration agreement. Usually, issues of arbitrability/validity are matters to be adjudicated upon by arbitrators. The only narrow exception carved out was that Courts could adjudicate to “cut the deadwood”. Ultimately the Court held that the watchword for the Courts is “when in doubt, do refer”.

11. In view of the above, applying the principle of “*when in doubt refer*”, this Court is inclined to appoint Ms. Neeha Nagpal, Advocate, (Mob:- 9810030834) as a Sole Arbitrator to adjudicate on the disputes between the Parties.

12. The question as to whether there is a dispute between the Petitioner



and the Respondent or not and the arbitrability of the said dispute will be decided by the Arbitrator in an application under Section 16 of the Arbitration Act.

13. The issue as to whether the bills raised by the Petitioner against the Respondent herein are for the consumer durable unit or for any other unit would be decided by the Arbitrator after entering reference.

14. The arbitration would take place under the aegis of the Delhi International Arbitration Centre (DIAC) and would abide by its rules and regulations. The learned Arbitrator shall be entitled to fees as per the Schedule of Fees maintained by the DIAC.

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

16. All rights and contentions of the parties in relation to the claims/counter-claims are kept open, to be decided by the learned Arbitrator on their merits, in accordance with law.

17. Needless to say, nothing in this order shall be construed as an expression of this Court on the merits of the contentions of the parties.

18. The petition is disposed of along with pending application(s), if any.

SUBRAMONIUM PRASAD, J

DECEMBER 19, 2024

Rahul