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

+ **ARB.P. 936/2023**

GAURAV ENTERPRISES

..... Petitioner

Through: Mr. Akash Kumar, Adv.

versus

UNION OF INDIA

..... Respondent

Through: Ms. Garima Sachdeva, Adv.

CORAM:

HON'BLE MR. JUSTICE JASMEET SINGH

ORDER

10.01.2024

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1. This is a petition seeking appointment of an Arbitrator in terms of Clause 16 of General Terms and Conditions of Contract which reads as under:

“Amicable Settlement:

In the event of any question, dispute or difference arising connection with the contract, the Parties shall use their respective reasonable endeavour to settle any dispute amicably. If a dispute is not resolved within 30 days after written notice of any dispute by one Party to the other, the same shall be resolved through the mechanism of a co-ordination committee to be formed by the Buyer and Seller/Service Provider and to be chaired by the Primary User of Buyer Organization/Department along with representatives from Buyer Department and Seller.

ARBITRATION:

In the event of any question, dispute or difference arising under the terms and conditions of the contract placed through GeM,



the same shall be referred to the sole arbitration by an officer nominated as Arbitrator by the Primary Buyer of the concerned Buyer Organization. It will be no objection that the arbitrator is a Government Servant and that he had to deal with the matters to which the contract relates or that in the course of his duties as a Government servant he has expressed views on all or any of the matters in dispute or difference. The award of the arbitrator shall be final and binding on the parties to the contract. The arbitration shall be governed as per Indian Arbitration and Conciliation Act 1996 as amended up to date. The place for arbitration shall be at the place from where contract has been placed by the Buyer or at the place of Primary Buyer as decided by the Primary Buyer.

In the event of the Arbitrator dying, neglecting or refusing to act or resigning or being unable to act for any reason, or his award being set aside by the court for any reason, it shall be lawful for the Primary Buyer to appoint another arbitrator in place of the outgoing arbitrator in the manner aforesaid.

In respect of all contract placed through GeM, the dispute would not be referred or entertained by Micro and Small Enterprise Facilitation Council, Consumer Forum or any other adjudication forum.

All disputes in connection with the Contract, shall be subject to the exclusive jurisdiction of the Court within the local limits of whose jurisdiction, the place from where Contract was issued is situated

GeM SPV would not be a party to any such dispute/matter.

In case any Seller / Service provider makes GeM a party / respondent in any case involving any dispute between Buyer and Seller arising out of a concluded contract or arising out of bidding process initiated / concluded by the Buyer on GeM, it would be obligatory on the part of the Buyer to represent GeM also through their Counsel / Lawyer in the proceedings before the legal authority and ensure timely filing of replies / affidavits etc provided by GeM also through their Counsel / Lawyer before the concerned legal authority during the course of litigation. A standard reply on behalf of GeM, covering following aspects shall be incorporated in all replies / affidavits



filed by the Buyer in such cases:

“Government e-Marketplace is a National Public Procurement Portal; an end-to- end online Marketplace for Central and State Government Ministries / Departments, Central & State Public Sector Undertakings (CPSUS & SPSUs), Autonomous institutions and Local bodies, for procurement of common use goods & services. Prima facie, the dispute in the present case appears to be between the Buyer and Seller arising out a contract placed / bid created by the Buyer on Government e-Marketplace. As per Clause 16, Clause 17 and Clause 22 of the General Terms and Conditions of Government e-Marketplace (duly accepted by the Buyer and Seller), GeM is not to be made a party to any dispute between the Buyer and the Seller. As such Government e-Marketplace is liable to be deleted from the array of parties.

In light of the above, we request your goodself to kindly delete Government e- Marketplace from the array of parties.”

2. The petitioner has served notice under Section 21 on 07.04.2022.
3. The respondent has filed a reply, wherein the disputes are on merits.
4. Since there are disputes between the parties, in terms of Clause 16

Sole Arbitrator needs to be appointed in the following terms:-

- i) Ms. Anjana Gosain, Adv. (Mob. No. 9810100674) 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.
5. The petition is allowed and disposed of in the aforesaid terms.

JASMEET SINGH, J

JANUARY 10, 2024/DM

Click here to check corrigendum, if any