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IN THE HIGH COURT OF DELHI AT NEW DELHI

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ARB.P. 955/2023 & I.A. 25592/2023

KAUSHALYA CONTRACTORS AND DEVELOPERS PVT LTD

..... Petitioner

Through: Mr. M. K. Vashisht with Mr. Ashok
Rajagopalan, Advocates.

versus

INDICATION INSTRUMENTS LTD

..... Respondent

Through: Mr. Ayush Agarwala, Advocate.

CORAM:

HON'BLE MR. JUSTICE ANUP JAIRAM BHAMBHANI

ORDER

16.01.2024

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By way of the present petition under section 11(6) of the Arbitration & Conciliation Act 1996 ('A&C Act'), the petitioner seeks appointment of a Sole Arbitrator to adjudicate upon the disputes that are stated to have arisen with the respondent from Agreement dated 22.07.2020 ('Agreement').

2. Notice on this petition was issued on 18.09.2023; whereupon short reply dated 06.11.2023 has been filed by the respondent; to which rejoinder dated 11.12.2023 has also been filed by the petitioner.
3. Mr. M. K. Vashisht, learned counsel for the petitioner has drawn the attention of this court to clause II/1.37 of the Agreement which comprises the arbitration agreement between the parties; and contemplates reference of disputes between them to arbitration in accordance with the A&C Act, with the 'venue' of arbitration being at



New Delhi; and subjects the contract between the parties to the jurisdiction of courts at Delhi.

4. As per the record, the petitioner invoked arbitration *vide* Notice dated 29.06.2023; to which the respondent sent a reply dated 25.08.2023.
5. Mr. Ayush Agarwala, learned counsel appearing for the respondent opposes the appointment of an arbitrator in respect of *a part of the claim* cited in the petition, submitting that the dispute between the parties has arisen from 02 separate contractual arrangements, one written and one oral; and that there is no arbitration clause insofar as one of the contractual arrangements is concerned.
6. Mr. Agarwala submits that this is evidenced by the fact that the claims sought to be made arise from *two 'final bills'* dated 22.12.2022 and 19.01.2023 respectively, raised by the petitioner upon the respondent, in respect of work performed for them.
7. It is submitted that the final bill enclosed with letter dated 22.12.2022, appended as Document-R/1 to I.A. No. 25592/2023 filed by the respondent, is the only final bill arising from the Agreement signed between the parties; and this final bill is the only one, if at all, that can be the subject matter of arbitration.
8. Insofar as the other final bill dated 19.01.2023, appended as Document-R/2 with I. A. No. 25592/2023, is concerned, Mr. Agarwala submits that that final bill is in respect of work done pursuant to an oral agreement between the parties, which is not amenable to arbitration.
9. Mr. Agarwala also contends that the petitioner is seeking to make a claim in excess of the amount stated in the final bills, which was



approximately Rs. 48.41 lacs, as asserted in para 5 of rejoinder dated 11.12.2203 filed in the matter.

10. It is argued that any amount exceeding the sum stated in the final bills must be deemed to have been waived and/or covered by the principle of accord and satisfaction, and cannot be arbitrable.
11. It is noticed however, that both the so-called final bills contain the following narration as to the description of goods for which the bills have been raised :

*“Construction of Factory Complex at Plot no. 54/06
faridabad for M/S Indication Instrumants Ltd.- Civil, Sanitary &
Site Development”*

which narration is *exactly the same* for both bills. Furthermore, on a cursory perusal of the Agreement, whereby the respondent had engaged the services of the petitioner, shows that the project was for construction/execution of a factory building at Plot No. 54, Sector-6, Faridabad, Haryana; and the 02 final bills relate to the construction of the same facility.

12. In the circumstances, while leaving the objections raised by the respondent open for being considered during the arbitral proceedings, this court does not consider it necessary to delve any deeper into those objections in these proceedings.
13. Upon a conspectus of the averments contained in the petition, the stand taken by the respondents, and the submissions made, this court is satisfied that there is a valid and subsisting arbitration agreement between the parties; that this court has territorial jurisdiction to entertain and decide the present petition; and also that the disputes



that are stated to have arisen between the parties, as set-out *inter-alia* in invocation notice dated 29.06.2023, do not appear *ex-facie* to be non-arbitrable.

14. Furthermore, since the arbitration agreement is silent on this aspect, the law requires that the disputes be referred to adjudication by a Sole Arbitrator.
15. Accordingly, the present petition is allowed and Mr. Tariq Khan, Advocate (Cellphone No.: +91 9999663628) is appointed as the learned Sole Arbitrator to adjudicate upon the disputes between the parties; and as requested by learned counsel for the parties, the arbitration proceedings shall be conducted under the aegis of the DIAC, in accordance with applicable rules.
16. The learned Sole Arbitrator would furnish to the parties requisite disclosures as required under section 12 of the A&C Act; and in the event there is any impediment to the appointment on that count, the parties are given liberty to file an appropriate application in this court.
17. The learned Arbitrator shall then proceed with the arbitral proceedings in accordance with the rules and regulations of DIAC and subject to arbitrator's fee and arbitration costs, as may be applicable.
18. All rights and contentions of the parties in relation to the claims/counter-claims are kept open, to be decided by the learned Sole Arbitrator on merits, in accordance with law.
19. A copy of this order be communicated *forthwith* to the Co-ordinator, DIAC, for information and compliance.
20. A copy of this order be sent by e-mail to the learned Sole Arbitrator, as also to learned counsel for the parties.



21. The petition stands disposed-of in the above terms.
22. Pending applications, if any, also stand disposed of.

ANUP JAIRAM BHAMBHANI, J

JANUARY 16, 2024

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