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IN THE HIGH COURT OF DELHI AT NEW DELHI

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ARB.P. 992/2023

BYGGING INDIA LIMITED

..... Petitioner

Through: Ms. Mreganka Kukreja, Advocate.

versus

INDURE PRIVATE LIMITED

..... Respondent

Through: Ms. Simran Wason, Advocate (M:
8800663896).

CORAM:

JUSTICE PRATHIBA M. SINGH

ORDER

% **27.03.2024**

1. This hearing has been done through hybrid mode.
2. The present petition has been filed by Bygging India Limited under Section 11 of the Arbitration and Conciliation Act, 1996 (hereinafter, 'the Act'), seeking appointment of a Sole Arbitrator to resolve the disputes that have arisen between the Petitioner and the Respondent- Indure Private Limited.
3. Ld. Counsel for the Respondent has appeared and she submits that the Company is out of Corporate Insolvency Resolution Process(CIRP) and the matter before the NCLT has been closed in Company Appeal (AT) (Insolvency) No. 1185/2023. The relevant portion of the order reads as under:-

"8. We however, are of the view that the principal amounts have been liquidated on 21.08.2023 before admission of Section 9 Application. Section 9 Application need not be continued any further. In so far as the submission of the Respondent that the amount of Rs. 38,82,800/- which was payable to another entity NB Equipment & Engineering Private Limited should also be paid by the Appellant, the said claim being not part of



Section 9 Application as is clear from Part-IV as stated above, for the said payment it cannot be set as precondition in Section 9 Application due to non-payment of the amount of Rs. 38,82,800/- Section 9 proceeding can be allowed to continue. In event, continuance of Section 9 proceedings for recovery of Rs 38,82,800/- it will be nothing but recovery of some amount which is not Part - IV of the Section 9 Application and not permissible.

9. We thus, are of the view that submissions of the Operational Creditor that amount of Rs. 38,82,800/- also to be paid, cannot be accepted and the principal amount having been liquidated on 21.08.2023 before admission of Section 9 Application and for MSME interest proceedings have already been initiated by Operational Creditor, we are of the view that Section 9 proceedings be closed with liberty to Operational Creditor to proceed under MSME Act to recover interest, if any. The Appellant may also make payment of Rs.2,00,000/- along with GST as was fixed by the Adjudicating Authority by the impugned order for payment of fee and expenses to the IRP. Let the said amount be paid within two weeks from today by the Bank Draft. 10. In view of our discussion and conclusion we allow the appeal and set aside the impugned order, close the CIRP with liberty as aforesaid.”

Thus, there is no impediment in proceeding with the present matter.

4. In the present case, the Petitioner was awarded a work order on 10th December, 2015 for civils works of piling for work of coal handling plant (2x195 MW) at NTPC- Solapur Super Thermal Power project at Fatehwadi Village, Solapur District, Maharashtra.

5. The work was completed as per the Petitioner and release of payments were sought. According to the Petitioner, a total sum of Rs.9,88,58,259/- is due. It is stated that the Petitioner sent an email dated 21st April, 2022 to the



Respondent invoking the dispute resolution under Clause 14 of the General Conditions Contract in relation to pending dues. The arbitration Clause as laid down in the Contract reads as under:-

“14.00 ARBITRATION:

Where any dispute is not resolved as provided for in the clause 13.5 then the following provisions shall apply:

a) The dispute shall be referred to arbitration at the request of either party upon written notice to that effect to the other party (a “Notice of Reference”) in accordance with the Arbitration Rules of Indian Arbitration and Conciliation Act, 1996 in force at the date of the agreement. Where the rules do not deal with any issue arising in connection with the conduct and/or procedure of the arbitration such issue shall be resolved in accordance with the law of the place in which the arbitration is held and GCC clause 14 shall be construed accordingly.

b) Performance of the contract shall continue during any arbitration proceedings pursuant to above clause unless the employer shall order the suspension thereof pursuant to GCC clause 13.

c) Upon every or any such reference, the cost of and incidental to the reference and award respectively shall be on the direction of the Sole Arbitrator so appointed who may determine the amount thereof or direct the same as between party & parties by whom and in what manner the same is to be borne and paid.

d) The place of arbitration shall be Delhi and the language of the arbitration shall be English.

e) The parties agree that any arbitration award shall be final and binding upon the parties (to the fullest extent permitted by applicable law) and the parties waive their right to any form of appeal or other similar recourse to a court or law.

f) The arbitration will take place before a Sole arbitrator who shall be nominated by Mr. N.P. Gupta,



*Chairman of Desein Private Limited, Desein House,
Greater Kailash-II, New Delhi 110048.”*

6. There were several back and forth discussions in the matter. But the same are not resolved. In terms of the latest legal position, the appointment of the arbitrator can no longer be done by the party mentioned in the clause. Accordingly, the disputes are, accordingly, referred to an independent Id. Sole Arbitrator.

7. **Mr. Dhruv Tamta, Advocate (9899989917)** is appointed as the Id. Sole Arbitrator. The Arbitration proceedings shall take place under the aegis of the Delhi International Arbitration Centre (hereinafter, ‘DIAC’). The arbitration proceedings shall be conducted under the Rules of DIAC. The fee of the Id. Sole Arbitrator shall be as per the Fourth Schedule of the Act, as amended by the DIAC Rules.

8. List before the DIAC on 15th April, 2024. Let a copy of the present order be emailed to Secretary, DIAC on the email id- delhiarbitrationcentre@gmail.com.

9. Id. Counsel for the Respondent wishes to file an application under Section 16 of the Act before the Id. Tribunal. If so, she may do so before the Id. Arbitrator, in accordance with law.

10. The Petition is disposed of with all pending applications, if any.

PRATHIBA M. SINGH, J

MARCH 27, 2024

mr/bh