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

+ ARB.P. 942/2024

M/S MAKKER CONSTRUCTION

.....Petitioner

Through: Mr. Avinash Trivedi, Mr. Anurag
Kaushik and Mr. Rahul Aggarwal,
Advocates

versus

DELHI TOURISM AND TRANSPORTATION DEVELOPMENT
CORPORATION LTD.

.....Respondent

Through: Appearance not given.

+ ARB.P. 987/2024

M/S MAKKER CONSTRUCTION

.....Petitioner

Through: Ms. Janvi Worah, Adv.
(through VC)

versus

DELHI TOURISM AND TRANSPORTATION DEVELOPMENT
CORPORATION LTD.

.....Respondent

Through: Mr. Ansh Singh Luthra, Adv.
(through VC)

CORAM:

HON'BLE MR. JUSTICE PRATEEK JALAN

ORDER

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24.07.2024

1. The petitioner has approached this Court, under Section 11 of the Arbitration and Conciliation Act, 1996 [“the Act”], for appointment of an arbitrator to adjudicate disputes between the parties under two separate contracts. The first contract [in ARB.P. 942/2024] was for construction at *Sarvodaya Kanya Vidyalaya, Yamuna Vihar, New Delhi*, which was awarded to the petitioner by the respondent’s communication dated



28.06.2016. The second contract [in ARB.P. 987/2024] was for construction at *Govt. Sarvodaya Kanya Vidyalaya No.1 and Sarvodaya Bal Vidyalaya No. 2, C-Block, Janak Puri, New Delhi*, which was awarded to the petitioner by the respondent's communication dated 19.06.2018.

2. Both contracts admittedly contain arbitration clauses [Clause 25 of General Conditions of Contract], which provide for resolution of disputes by arbitration. Disputes having arisen between the parties, the petitioner invoked arbitration by letters dated 08.11.2023 and 04.12.2023, respectively.

3. The respondent, *vide* reply dated 06.12.2023 to the notice dated 08.11.2023, sought certain supporting documents, without disputing the arbitration agreement. *Vide* reply dated 14.12.2023 to the notice dated 04.12.2023, it denied the claims of the petitioner on merits, but again, did not dispute the existence of the arbitration agreement.

4. Despite certain further correspondence between the parties, they have been unable to achieve consensus with regard to the identity of the arbitrator. The petitioner has, therefore, approached this Court under Section 11 of the Act.

5. Learned counsel enters appearance on behalf of the respondent and submits that, although the existence of the arbitration clause is not disputed, the claims of the petitioner under both the contracts were finally settled on 01.11.2018 and 08.01.2021, respectively.

6. The scope of the Court's jurisdiction under Section 11 of the Act is



extremely limited. As far as the plea of arbitrability is concerned, including defences of accord and satisfaction, and limitation, these are to be left for adjudication by the learned arbitrator. This position has been made clear in the very recent judgment of the Supreme Court in *SBI General Insurance Co. Ltd. vs. Krish Spinning* [Civil Appeal No. 7822/2024, decided on 18.07.2024].

7. Having regard to the above, and to the fact that the existence of the arbitration clause is undisputed, the petitions are liable to succeed.

8. The petitions are therefore allowed and the disputes between the parties under both the aforesaid contracts are referred to arbitration of Hon'ble Ms. Justice Asha Menon, former Judge of this Court [Tel: 9910384664]. The arbitrations will be held under the aegis of Delhi International Arbitration Centre, Delhi High Court, Shershah Road, New Delhi-110503 ["DIAC"], and will be governed by the Rules of DIAC, including as to the remuneration of the learned arbitrator.

9. The learned arbitrator is requested to furnish a declaration under Section 12 of the Act, prior to entering upon the reference.

10. The two arbitrations will be treated as independent proceedings for all purposes, but the learned arbitrator may consider whether to hold hearings jointly or separately.

11. It is made clear that all rights and contentions of the parties are left open for adjudication by the learned arbitrator.

PRATEEK JALAN, J

JULY 24, 2024/PU/