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

+ ARB.P. 1192/2022, I.A. 17248/2022

M/S. BAJRANG IRON PRIVATE LIMITED Petitioner

Through: Mr. Ajay, Adv.

versus

HN STEEL CASTINGS PRIVATE LIMITED & ORS.

..... Respondents

Through: Ms. Abha Malhotra, Ms. Amrita
Sony, Advs.

CORAM:
HON'BLE MR. JUSTICE JASMEET SINGH

ORDER
02.04.2024

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1. This is a petition seeking appointment of an arbitrator under Section 11(6) of the Arbitration and Conciliation Act, 1996.
2. It is stated that on 27.06.2016, a Memorandum of Understanding (MoU) was executed between the petitioner and the respondents.
3. As per the MoU, it was agreed that respondent Nos. 1 and 2 would make arrangement/rearrangement for transfer of all land, building and plant and machinery to a single unit/entity which would enjoy tax upto 2020.
4. It was agreed that the petitioner would take over the induction furnace unit and TMT Rolling Mill along with Land and Building by acquiring the entire shareholding.
5. The consideration of the land, building, plant and machinery of respondent Nos. 1 and 2 was fixed at Rs. 20,70,00,000/-, out of which



petitioner paid a sum of Rs. 1,00,00,000/-.

6. It was further agreed that the date of the execution of the sale deed would be 31.12.2016 and the respondent was required to comply with some obligations before the said date.

7. As per the clause 5 of the MoU, in case the respondents were unable to comply with their obligations, they were required to return double the amount paid by the petitioner, i.e. Rs. 2 crores.

8. Since the same was not returned, the petitioner has filed the present petition in terms of clause 18 of the MoU which reads as under:

“18. In the event of any dispute or difference between any of the Parties in respect of or concerning or connected with this MOU, such dispute or difference shall be referred to the sole arbitrator to be mutually appointed by both the parties and such arbitral proceedings shall be conducted as per provisions of the Arbitration & conciliation Act, 1996. The arbitration proceedings shall be held in New Delhi and the language for such arbitration shall be English.

19. The courts in Delhi shall have exclusive jurisdiction to adjudicate all disputes arising out of and/or in connection with this Memorandum of Understanding.”

9. The petitioner on 31.01.2019 also issued a legal notice to the respondents demanding reference of disputes to arbitration.

10. The arbitrator was appointed and made an award in favour of the petitioner. However, the said award was set aside by the District Judge, Una, Himachal Pradesh, vide order dated 25.07.2022 in EX.P. No. 198/2019 on the ground that the same is void, null and unexecutable.

11. Hence, the present petition.

12. On 04.09.2023, this Court permitted the respondent No. 1 to be served



through substituted service/publication in a newspaper having circulation at Una, Himachal Pradesh.

13. Pursuant to the said liberty, the petitioner has handed over an affidavit stating that the publications were made in the Times of India and Dainik Savera Himachal. Both the newspapers have circulation in Una, Himachal Pradesh.

14. For the said reasons, I am satisfied that respondent No. 1 is served and despite service, there is nobody appearing on behalf of respondent No. 1.

15. The arbitration agreement was entered into at New Delhi. Clause Nos. 18 and 19 of the agreement envisaged the jurisdiction of the Courts at New Delhi. Hence, the present petition is within the territorial jurisdiction of this Court.

16. For the said reasons, the petition is allowed and disposed of with the following directions:

- i) Mr. M.S. Oberoi (Adv.) (Mob. No. 9811551525) 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.
- 17. The affidavit handed over in court is taken on record.

JASMEET SINGH, J

APRIL 2, 2024/DM

Click here to check corrigendum, if any