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IN THE HIGH COURT OF DELHI AT NEW DELHI

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ARB.P. 1053/2023 & I.A. 19883/2023

MOHD. KHALIK PROPRIETOR OF M/S KGN
ELECTRICALS

..... Petitioner

Through: Mr. Praveen Bhatia, Advocate.

versus

M/S NUTECH CONTRACTS PRIVATE
LIMITED

..... Respondent

Through: Mr. Ashwini Kumar, Advocate.

CORAM:

HON'BLE MR. JUSTICE PRATEEK JALAN

ORDER

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10.01.2024

1. By way of the present petition filed under Section 11(6) of the Arbitration and Conciliation Act, 1996 ["the Act"], the petitioner seeks appointment of Arbitral Tribunal comprising of a sole Arbitrator to adjudicate the disputes between the parties.
2. Learned counsel for the petitioner submits that the respondent had awarded the petitioner a Work Order dated 25.03.2021. It is submitted that the said Work Order contains an arbitration clause (Clause 37), which provides that all disputes with respect to the said Work Order, shall be referred to arbitration, and further provides that the place of arbitration would be at Delhi.
3. Disputes having arisen between the parties, the petitioner invoked arbitration vide legal notice dated 02.09.2023, to which no response was



received.

4. Mr. Ashwini Kumar, learned counsel, has entered appearance on behalf of the respondent, pursuant to notice issued on 30.10.2023. Mr. Kumar does not dispute the existence of the arbitration clause, but submits that, before arbitration proceedings are commenced, parties may be referred to mediation so that disputes can be resolved mutually.

5. Mr. Praveen Bhatia, learned counsel for the petitioner, has no objection to this suggestion.

6. In view of the above, the petition is disposed of with the following directions:

- A. The parties are referred to mediation under the aegis of Samadhan, Delhi High Court Mediation and Conciliation Centre, Shershah Road, New Delhi-110503. The parties will appear before the learned Mediator on 24.01.2024.
- B. In the event the mediation proceedings are unsuccessful, the disputes will be adjudicated by arbitration under the aegis of Delhi International Arbitration Centre, Delhi High Court, Shershah Road, New Delhi ["DIAC"]. In such an eventuality, DIAC is requested to nominate an arbitrator from its panel. The arbitration proceedings will be governed by the Rules of DIAC, including as to remuneration of the learned Arbitrator.
- C. The learned Arbitrator is requested to furnish a declaration under Section 12 of the Act, prior to entering upon the reference.
- D. In order to enable the parties to settle their disputes in mediation, DIAC may not take steps for commencing the arbitral proceedings only on or after 01.03.2024. Either party may approach DIAC for



constitution of the Arbitral Tribunal any time after the said date.

7. Mr. Bhatia states that, pursuant to the order of this Court dated 30.10.2023, the original copy of the Work Order has been placed in the custody of the Court. He submits that these directions were passed as the work order was unstamped, having regard to the directions of the Constitution Bench of the Supreme Court in *NN Global Mercantile v Indo Unique Flame* [(2023) 7 SCC 1], and the decision of this Court dated 22.08.2023 in ARB.P. 366/2021 [*Splendor Landbase Ltd. vs. Aparna Ashram Society & Anr*]. Since then, the judgment of the Supreme Court in *NN Global* has been overruled by a Seven Judge Bench of the Supreme Court by judgment dated 13.12.2023 in Curative Petition (C) No. 44/2023 and connected matters (*In Re: Interplay Between Arbitration Agreements under the Arbitration and Conciliation Act, 1996 and the Indian Stamp Act, 1899*), and it has been held that objections as to stamping are not within the province of the Court at the stage of Section 11 of the Act. The Registry is therefore directed to return the original Work Order to learned counsel for the petitioner.

PRATEEK JALAN, J

JANUARY 10, 2024

“Bhupi”/