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

+ **ARB.P. 1048/2024 & I.A. 33578/2024**

SUBHASH CHAND DUBEY

.....Petitioner

Through: **Mr. Jitesh Talwani & Mr. Vaibhav Mehra, Advocates.**

versus

ITI LTD

.....Respondent

Through: **Mr. Shashank Manish, Ms. Nidhi Sahay & Ms. Rashi, Advocates.**

CORAM:

HON'BLE MR. JUSTICE PRATEEK JALAN

ORDER

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22.07.2024

1. By way of this petition under Section 11 of the Arbitration and Conciliation Act, 1996 [“the Act”], the petitioner seeks appointment of an arbitrator to adjudicate disputes between them under a Letter of Intent dated 11.11.2020 forming part of a contract documents alongwith the general terms and conditions supplied in tender dated 21.09.2020.
2. Pursuant to notice issued on 19.07.2024, Mr. Shashank Manish, learned counsel for the respondent, has taken instructions. He submits that existence of the arbitration clause is undisputed, but the respondent contends that some of the claims sought to be asserted by the petitioner, relating to additional work done, outside the scope of the original tender, are non-arbitrable.
3. Having regard to the recent judgment of the Supreme Court in *SBI*



General Insurance Co. Ltd. v. Krish Spinning [C.A No. 7822/2024 arising out of SLP (C) 7220/2024] [*“SBI General Insurance”*], I am of the view that the appropriate course in such circumstances is to refer the parties to arbitration leaving open the respondent’s rights to contest the question of arbitrability before the learned arbitrator. In *SBI General Insurance*, the Supreme Court has examined the scope pre-referral scrutiny in the context of its earlier decisions in *Vidya Drolia v. Durga Trading Corpn.*, (2021) 2 SCC 1 and *NTPC Ltd. v. SPML Infra Ltd.*, (2023) 9 SCC 385. It has come to the conclusion that the decision of the seven Judge Bench in *In Re: Interplay Between the Arbitration Agreements under the Arbitration and Conciliation Act, 1996 and the Indian Stamp Act, 1899*, (2024) 6 SCC 1, has further restricted the scope of Section 11 scrutiny, to the existence of the arbitration agreement with all ancillary question of maintainability, including arbitrability and limitation etc. to be decided by the arbitral tribunal.

4. Having regard to the above, the petition is allowed and the disputes between the parties under the Letter of Intent dated 11.11.2020 forming part of a contract documents alongwith the general terms and conditions supplied in tender dated 21.09.2020, are referred to arbitration under the aegis of Delhi International Arbitration Centre, Delhi High Court, Shershah Road, New Delhi [*“DIAC”*]. DIAC is requested to nominate an Arbitrator from its panel.

5. The arbitration proceedings will be governed by the Rules of DIAC, including as to remuneration of the learned Arbitrator.

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



7. It is made clear that all rights and contentions of the parties, including as to maintainability, are left open for adjudication by the learned arbitrator.

8. The petition, alongwith the pending application, stand disposed of with these observations.

PRATEEK JALAN, J

JULY 22, 2024
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