



\$~2

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

+ **ARB.P. 1081/2023**

STERLITE TECHNOLOGIES LIMITED Petitioner

Through: Mr. Abhinav Mukerji, Senior
Advocate with Ms. Pratishtha Vij,
Ms. Bihu Sharma and Mr. Raghav
Bhatia, Advocates.

versus

BHARAT SANCHAR NIGAM LIMITED & ANR. Respondents

Through: Mr. Dinesh Agnani, Senior Advocate
with Ms. Leena Tuteja and Ms. Ishita
Kadyan, Advocates for R-1.
Ms. Reba Jena Mishra, Advocate for
R-2.

CORAM:

HON'BLE MR. JUSTICE ANUP JAIRAM BHAMBHANI

ORDER

23.01.2024

%

At the outset, learned counsel appearing for the parties are informed that the spouse of the under-signed has a small shareholding in the petitioner company/Sterlite Technologies Limited. Counsel appearing for the parties in the matter submit, that they have no objection to the under-signed considering and deciding the present matter.

2. By way of the present petition filed under section 11(6) of the Arbitration & Conciliation Act 1996 ('A&C Act'), the petitioner seeks appointment of a Sole Arbitrator to adjudicate upon the disputes that are stated to have arisen from Purchase Order dated 15.10.2018



(‘Purchase Order’) issued by respondent No.1/Bharat Sanchar Nigam Limited (‘BSNL’) in favour of the petitioner company/Sterlite Technologies Limited.

3. Notice on this petition was issued on 16.10.2023. No reply has been filed by either of the respondents.
4. Mr. Abhinav Mukerji, learned senior counsel appearing for the petitioner has drawn the attention of this court to clause 22 of the Purchase Order, which comprises the arbitration agreement; and contemplates reference of disputes between the parties to arbitration in accordance with the A&C Act.
5. For completeness, it may be recorded that a separate provision concerning territorial jurisdiction is also contained in clause 28 of the Purchase Order, which subjects the contract between the parties to the jurisdiction of courts at Delhi.
6. As per the record, the petitioner invoked arbitration *vide* Notice dated 01.08.2023 addressed to both respondents; to which the respondent No.1 has responded *vide* communication dated 30.09.2023, denying all contentions raised in the above notice, and calling upon the petitioner to withdraw the notice of invocation.
7. Mr. Dinesh Agnani, learned senior counsel appearing for respondent No.1/BSNL submits, that as will be seen from a perusal of clause 20.4 under Section 5, Part-A of the Terms of Tender for Procurement Supply, Installation, Implementation, Commissioning and Maintenance Support of Country Wide Next Generation IP MPLS Network dated 31.01.2014 issued by respondent No.1/BSNL, once the civil construction relating to the project was complete and the



project was handed-over to respondent No. 2/Indian Navy, respondent No.1/BSNL had no concern with the matter; and in fact, any dispute was to be referred to the sole arbitration of the Vice Chief of Naval Staff, Integrated Headquarters, Ministry of Defence (Navy), New Delhi or other entrusted officer. In the circumstances, Mr. Agnani submits, that respondent No.1/BSNL cannot be referred to arbitration in the present proceedings.

8. On the other hand, Ms. Reba Jena, learned counsel appearing on behalf of Mr. Ruchir Mishra, learned counsel for respondent No. 2/Indian Navy submits, that they are not signatories to the terms of the tender; and are accordingly not bound by the arbitration agreement.
9. Responding to the contentions raised on behalf of the respondents, learned senior counsel for the petitioner submits, that the claim sought to be raised by the petitioner relates *inter-alia* to *additional civil work* undertaken in relation to the project; which would bring the dispute within the ambit of clauses 20.1 and 20.4 under Section 5, Part-A of the Terms of Tender.
10. Upon a conspectus of the matter, and in view of the mandate of the Supreme Court in ***Cox & Kings Ltd. vs. SAP India (P) Ltd.***¹, in the opinion of this court, it is not the remit of the referral court to enter upon the details of the disputes between the parties, including contentions raised on behalf of either of the respondents.
11. Other things apart, insofar clauses 20.1 and 20.4 are concerned, which contemplate reference of disputes for arbitration to officials of BSNL

¹2023 SCC OnLine SC 1634



and Indian Navy respectively, though clauses are, in any case, untenable in law, in view of the Supreme Court judgement in ***Perkins Eastman Architects DPC vs. HSCC (India) Ltd***².

12. Accordingly, keeping in view the averments contained in the petition, the stand taken by the respondents, and the submissions made, this court is satisfied that there is a valid and subsisting arbitration agreement between the parties; and that this court has territorial jurisdiction to entertain and decide the present petition; and also that the disputes that are stated to have arisen between the parties, as set-out *inter-alia* in invocation notice dated 01.08.2023, do not appear *ex-facie* to be non-arbitrable.
13. In view of the above, at this stage, learned counsel for the parties jointly request that this court may appoint an arbitrator; and then refer the matter for arbitration under the aegis of the Delhi International Arbitration Centre, New Delhi ('DIAC'), keeping all their respective factual and legal contentions open.
14. Accordingly, the present petition is allowed, and **Hon'ble Dr. Justice S. Muralidhar, former Chief Justice of the Orissa High Court (Cellphone No. : +91 9872727986)** is appointed as the learned Sole Arbitrator to adjudicate upon the disputes between the parties; with arbitration proceedings to be conducted under the aegis of the DIAC, in accordance with applicable rules.
15. The learned Sole Arbitrator would furnish to the parties requisite disclosures as required under section 12 of the A&C Act; and in the

² (2020) 20 SCC 760



event there is any impediment to the appointment on that count, the parties are given liberty to file an appropriate application in this court.

16. The learned Arbitrator shall then proceed with the arbitral proceedings in accordance with the rules and regulations of DIAC and subject to arbitrator's fee and arbitration costs, as may be applicable.
17. All rights and contentions of the parties in relation to the claims/counter-claims are kept open, to be decided by the learned Sole Arbitrator on merits, in accordance with law.
18. A copy of this order be communicated *forthwith* to the Co-ordinator, DIAC, for information and compliance.
19. A copy of this order be sent by e-mail to the learned Sole Arbitrator, as also to learned counsel for the parties.
20. The petition stands disposed-of in the above terms.
21. Pending applications, if any, also stand disposed-of.

ANUP JAIRAM BHAMBHANI, J

JANUARY 23, 2024/uj