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IN THE HIGH COURT OF DELHI AT NEW DELHI

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ARB.P. 1060/2024

S C AGARWAL

.....Petitioner

Through: Mr. Himanshu Upadhyaya, Ms.
Rosy, Advocates.

versus

CONTAINER CORPORATION OF INDIA LTD

& ANR.

.....Respondents

Through: Mr. R.K. Joshi, Mr. Ojusya Joshi,
Advocates.

CORAM:

HON'BLE MR. JUSTICE PRATEEK JALAN

ORDER

11.09.2024

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1. The petitioner has filed this petition under Section 11 of the Arbitration and Conciliation Act, 1996 ["the Act"], seeking appointment of an arbitrator to adjudicate disputes between the parties under an Agreement for Works dated 19.07.2016.
2. The petitioner relies upon the arbitration clause contained in Clause 64 of the General Conditions of Contract ["GCC"]. Disputes having arisen between the parties, pursuant to the said clause, it invoked arbitration by a letter dated 18.07.2023. According to the petitioner, the letter dated 18.07.2023 failed to elicit a response which has led to the filing of this petition.
3. On 22.07.2024, Mr. Joshi appeared on behalf of the respondents on



advance notice, and submitted that the applicability of the arbitration clause has been restricted to disputes of value less than or equal to 20% of the value in terms of the Special Conditions of Contract [“SCC”], which were not placed on record by the petitioner. The parties were directed to place affidavits in this regard.

4. It is now the common position that the SCC applies, and arbitration can only be initiated in respect of disputes of a value less than or equal to 20% of the contract. Mr. Himanshu Upadhyaya, learned counsel for the petitioner, states that the petitioner undertakes to restrict its claims to the amount permissible under the SCC.

5. At the very outset, it must be stated that the SCC ought to have been placed on record by the petitioner itself. An affidavit has been filed by the petitioner pursuant to the order dated 22.07.2024, a copy whereof is handed up in Court and taken on record. The petitioner seeks to place the responsibility for the omission upon its consultant, stating that the validity of the claims are to be adjudicated by the learned arbitrator rather than by the Court.

6. The aforesaid explanation does not commend to me. While relying upon the GCC, the petitioner was obliged to place the SCC on record, as it expressly restricts the relevant provision of the GCC. However, as the petitioner has now undertaken to restrict its claims in terms of clause 34 of the SCC, I am of the view that the petition can be disposed of on merits, subject to an order of costs against the petitioner. The petitioner is bound down to the undertaking recorded above.

7. The existence of the arbitration clause is undisputed. The affidavit in reply filed by the respondent also does not suggest that the



respondent's reply to the notice invoking arbitration offered a broad-based panel from which the arbitral tribunal could be constituted.

8. In view of the above position, and having regard to the provisions of clauses 63 and 64 of the GCC, Mr. Joshi submits that a three-member arbitral tribunal may be constituted, leaving the contentions of the respondents on arbitrability in terms of clauses 63 and 64 of the GCC open for adjudication by the arbitral tribunal.

9. In the aforesaid circumstances, I am of the view that the petition is liable to be allowed, subject to Mr. Joshi's suggestion that a three member arbitral tribunal be constituted, as required under clause 64 of the GCC is accepted.

10. The petitioner and the respondents are each directed to nominate their nominee arbitrators within two weeks, following which the two nominated arbitrators will nominate the presiding arbitrator within thirty days thereafter. Upon constitution of the arbitral tribunal as aforesaid, the proceedings may be taken up in accordance with law. The learned arbitrators are requested to furnish declarations under Section 12 of the Act, prior to entering upon the reference.

11. The arbitral proceedings will be conducted 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 remuneration of the learned arbitrator.

12. All rights and contentions of the parties, including arbitrability, maintainability of the claims and on merits, are left open for adjudication by the learned arbitrator.

13. For the reasons stated in paragraph 6 above, the petitioner is



directed to pay costs of Rs.10,000/-, to be deposited with the Delhi High Court Legal Services Committee [*UCO Bank, Delhi High Court, Shershah Road, New Delhi, Account No. 15530110008386, IFSC Code-UCBA0001553*]. Costs be deposited within one week from today.

PRATEEK JALAN, J

SEPTEMBER 11, 2024

“Bhupi”/