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

+ **ARB.P. 1176/2023**

M/S INDIA ENGINEERS AND FABRICATION

..... Petitioner

Through: Ms.Kanika Singh, Mr.Raghvendra
Upadhyay, Ms.Purnima Jain,
Mr.Vaibhav Tripathi and Mr.Tavdeep
Singh, advts.

versus

EVEREST INDUSTRIES LTD.

..... Respondent

Through: Ms.Supriya Majumdar, Adv. and
Mr.Kaustubh Prakash, Adv.

CORAM:

HON'BLE MR. JUSTICE DINESH KUMAR SHARMA

ORDER
19.01.2024

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I.A. 22088/2023 (delay)

1. The Present application has been filed for condonation of delay of 12 days in re-filing the present petition.
2. For the reasons mentioned in the application, the delay of 12 days in re-filing the petition is condoned.
3. The application stands disposed of.

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4. By way of present petition filed under Section 11(6) of the Arbitration and Conciliation Act, 1996 (hereinafter, referred to as the '*A&C Act*'), the petitioner seeks appointment of Arbitral Tribunal comprising of a sole



arbitrator, to adjudicate the disputes between the parties.

5. Briefly Stated, in the present case the petitioner is an MSME-registered establishment and reputed contractor executing all kinds of industrial fabrication and erection work. The Respondent issued a work order no. 43002928 in favour of the Plaintiff and immediately after taking over the site, the petitioner mobilized its labour and machinery to start the work of erection which resulted in huge idling charges being incurred by the petitioner. Thereafter, the petitioner submitted its bills for which the respondent denied the payment. Pursuant to which the petitioner issued a letter dated 14.07.2023 invoking the arbitration clause of the work order for adjudication of claims and disputes.
6. Learned counsel for the petitioner submits that the parties had entered into a Work Order dated 22.03.2021, which provides that disputes with respect to the agreement shall be resolved through arbitration as per provisions of A&C Act. It further provides that the place of arbitration would be at New Delhi. The agreement contains an arbitration clause (clause 10) which says any dispute arising out of or in connection shall be referred to arbitration with the venue at Delhi.
7. Disputes having arisen between the parties, the petitioner invoked arbitration vide notice dated 14.07.2023, issued under Section 21 of the A&C Act.
8. Learned counsel appearing for the respondent, on instructions, submits that the answering respondent has no objection to the matter being referred to the Arbitral Tribunal comprising of a Sole Arbitrator.
9. Considering that both the parties have consented to the reference to the arbitral tribunal, the present petition is disposed of with the following



directions:

- i) The disputes between the parties under the said agreement are referred to the arbitral tribunal.
- ii) As agreed by both the counsels for the parties, Mr. Rakesh Kapoor, Former District & Sessions Judge, Mobile No.9910384621 is appointed as an Arbitrator to adjudicate the disputes between the parties.
- iii) 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 Schedule IV of the A&C Act or as the parties may agree.
- iv) The learned Arbitrator is requested to furnish a declaration in terms of Section 12 of the Act prior to entering into the reference.
- v) 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.
- vi) The parties shall approach the learned arbitrator within two weeks from today.

10. The petition is disposed of in the above terms.

DINESH KUMAR SHARMA, J

JANUARY 19, 2024

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