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IN THE HIGH COURT OF DELHI AT NEW DELHI

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ARB.P. 1385/2022, I.A. 2115/2023

M/S ONEWAY PROJECT SERVICES PVT LTD Petitioner

Through: Mr. Rajiv Kumar, Mr. Sandeep
Pathak, Advs.

versus

M/S FLEXITUFF VENTURES INTERNATIONAL LTD

.....Respondent

Through: Mr. Priyam Bhatnagar, Adv.

CORAM:

HON'BLE MR. JUSTICE JASMEET SINGH

ORDER

23.01.2024

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1. This is a petition seeking appointment of an Arbitrator to adjudicate the claims of the petitioner against the respondent under the Agreement which includes two work orders dated 10.05.2019 and 10.06.2019 (hereinafter referred to as “work orders”).
2. Both work orders contain identical Arbitration Clauses, which are contained in clause 27 of their respective Special Conditions of Contract and read as under:-

“ARBITRATION

All matters relating to disputes and difference of opinion will have to be settled mutually as far as possible. In case the Sub-Contractor decides to settle a dispute through arbitration, it will be dealt by the provisions of the Arbitration Act, 1996 and as amended from time to time. The need for settlement through arbitrator and issue concerned will have to be informed to FVIL in writing. The arbitration will be referred to a one-man arbitration committee and the arbitrator will be



nominated by the FVIL. His verdict will be final and deemed to be order of any court under the jurisdiction. The name of the arbitrator will be informed by the FVIL or his authorized representative. The arbitrator may not be the same person each time and the FVIL or his representative has full right to change the arbitrator nominated earlier. Settlement of disputes (if any) will be within the jurisdiction of court of Delhi.

In case of arbitration by the executing Sub-Contractor, the final award of the arbitrator and the expenditure during the arbitration process (if any) shall be paid by FVIL, if and only if, such costs is reimbursed by WAPCOS / PDIL / HURL.”

3. Since there were disputes between the parties, the petitioner invoked the arbitration clause vide Legal Notice dated 11.10.2022, despite which the arbitrator was not appointed.
4. In the objections to the petition, the only objection is with regard to the maintainability of the petition, specifically on the work orders being unstamped.
5. A seven judge bench of the Hon’ble Supreme Court in ***In Re: Interplay between Arbitration Agreements under the Arbitration And Conciliation Act, 1996 and the Indian Stamp Act, 1899*** 2023 SCC OnLine SC 1666 has held as under:

“234. The conclusions reached in this judgment are summarised below:

*a. Agreements which are not stamped or are inadequately stamped are inadmissible in evidence under Section 35 of the Stamp Act. **Such agreements are not rendered void or void ab initio or unenforceable;***



- b. Non-stamping or inadequate stamping is a curable defect;*
- c. An objection as to stamping does not fall for determination under Sections 8 or 11 of the Arbitration Act. The concerned court must examine whether the arbitration agreement prima facie exists;*
- d. Any objections in relation to the stamping of the agreement fall within the ambit of the arbitral tribunal; and*
- e. The decision in NN Global 2 (supra) and SMS Tea Estates (supra) are overruled. Paragraphs 22 and 29 of Garware Wall Ropes (supra) are overruled to that extent.”*

(emphasis supplied)

6. In view of the aforesaid judgment, Mr. Priyam Bhatnagar, learned counsel for the respondent has no objection to the petition being allowed and appointment of an Arbitrator.
7. For the said reasons, the petition is allowed. Since the parties are still having disputes between them, the following directions are issued:-
- i) Mr. Swastik Singh, (Advocate) (Mob. No.9717419767) is appointed as a Sole Arbitrator to adjudicate the disputes between the parties.
 - ii) 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 the Fourth Schedule of the Arbitration & Conciliation Act, 1996.
 - iii) The learned Arbitrator is requested to furnish a declaration in terms of Section 12 of the Act prior to entering into the reference.



- iv) 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.
 - v) The parties shall approach the learned Arbitrator within two weeks from today.
8. The petition is allowed and disposed of in the aforesaid terms.

JASMEET SINGH, J

JANUARY 23, 2024/NG