



2024:DHC:7317



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IN THE HIGH COURT OF DELHI AT NEW DELHI

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ARB.P. 1161/2024

M/S HARIOM INFRASTRUCTURES

....Petitioner

Through: Mr. R.K. Mishra, Adv.

versus

M/S JOP INTERNATIONAL LTD

.....Respondent

Through: Mr. Aayush Malhotra and Mr.
Shobhit Garg, Advs.**CORAM:****HON'BLE MR. JUSTICE C. HARI SHANKAR****ORDER (ORAL)**

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19.09.2024

1. This is a petition under Section 11(5) of the Arbitration and Conciliation Act, 1996¹, seeking reference of the dispute between the parties to arbitration.

2. The dispute arises in the context of a facility agreement dated 5 September 2022, executed between the petitioner and the respondent. Clause XXIV of the agreement envisages resolution of dispute by arbitration and read thus:

“XXIV. Arbitration:

In the event of any dispute of difference arising between the Parties, relating to or connected with this Agreement of the claims pertaining thereto or as to the meaning of constructions of the terms and conditions contained herein or application thereof during the subsistence of this Agreement or after the termination thereof, the same shall be referred to the arbitration of a sole arbitrator, appointed by the company at the equal cost of the Parties, the arbitration proceedings, shall be carried on in accordance with the provisions of the Arbitration and Conciliation Act, 1996 and the place of Arbitration shall be in Delhi. The decision of the arbitrator shall be final and binding on the Parties.

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the 1996 Act”, hereinafterDigitally Signed
By: AJIT KUMAR
Signing
Date: 22.09.2024 20:37

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By: CHANDRASHEKHAR
AN HARI SHANKAR
Signing Date: 22.09.2024
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The Contractor has accepted and agreed and herein confirms that ha shall abide and is willing to execute the project assigned to him in accordance with the terms and conditions of this contract of Agreement and in turn the Company also agrees to engage the Contractor with effect from 1st March 2022.”

3. The clause envisages arbitration by an Arbitrator to be appointed by the respondent. In view of the judgments of the Supreme Court in *Bharat Broadband Network Ltd v United Telecoms Ltd*², *Perkins Eastman Architects DPC v HSCC (India) Ltd*³, and *Haryana Space Application Centre (HARSAC) v Pan India Consultants Pvt Ltd*⁴, an arbitration clause which grants unilateral right of appointment to one of the parties to the agreement cannot be effectuated, and both parties have to be involved in the appointment of the Arbitrator, failing which the Court has to intervene.

4. The petitioner issued a notice to the respondent under Section 21 of the 1996 Act on 22 November 2023, seeking reference of the dispute to arbitration. The respondent did not reply. The petitioner has, therefore, approached this Court under Section 11(5) of the 1996 Act to appoint an Arbitrator.

5. Despite issuance of notice, the respondent has not replied to this petition. The learned Counsel for the respondent has left the matter to the Court.

6. The claim of the petitioner against the respondents is in the

² (2019) 5 SCC 755

³ (2020) 20 SCC 760

⁴ (2021) 3 SCC 103

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range of ₹28 lakhs.

7. Accordingly, this court appoints Mr. Nilansh Gaur, Advocate (Mob. 8826460770), as the arbitrator to arbitrate on the disputes between the parties.

8. The learned arbitrator shall be entitled to charge fees as per the Fourth schedule of the 1996 Act.

9. The learned Arbitrator is also requested to file requisite disclosure under Section 12(2) of the 1996 Act prior to entering on the reference.

10. All questions of fact and law, preliminary as well as on merits, shall be left open to be agitated in the arbitral proceedings.

11. The petition stands allowed in the aforesaid terms.

C. HARI SHANKAR, J.

SEPTEMBER 19, 2024/aky

Click here to check corrigendum, if any

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