



2024:DHC:9266



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

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Date of Decision : 28.11.2024+ **ARB.P. 1163/2024**

M/S MOONWALK INFRA PROJECTS PVT LIMITEDPetitioner
Through: Mr. Arpit Sharma, Mr. R. Kumar, Mr.
Anant Sharma, Advocates.

versus

M/S FRUITMONT PRIVATE LIMITEDRespondent
Through: Mr. Avtar Singh, Advocate.

CORAM:
HON'BLE MR. JUSTICE SACHIN DATTA

SACHIN DATTA, J. (Oral)

1. The present petition under Section 11(6) of the Arbitration and Conciliation Act, 1996 seeks appointment of a Sole Arbitrator to adjudicate the disputes between the parties.
2. The disputes between the parties have arisen in the context of a Purchase Order dated 07.11.2023 for supply and erection of a pre fabricated building by the petitioner in terms of the approved drawings provided by the respondent.
3. The purchase order was issued by the respondent pursuant to a techno commercial proposal submitted by the petitioner to the respondent. The said techno commercial proposal contains details about the project including technical parameters, delivery schedule and other details as to the work to be performed, and the commercial details.



4. The said terms and conditions also contain an Arbitration clause as under:-

“Governing law

This agreement shall be construed and enforced in accordance with and under the laws of the Government of India. Both parties agree that in case of any difference or dispute arising between the Moonwalk infraprojects Pvt ltd. And the Buyer will be resolved by mutual discussions and agreement. However, unresolved issues, if any, will be settled by arbitration as per the Indian Arbitration and Conciliation Act, and the venue of the arbitration will be Delhi, India. Further, for any change in the venue of arbitration, Buyer needs to ensure that Moonwalk Infra Projects Pvt Ltd has accepted the same in writing that too explicitly mentioning the same clearly. In case, if it is not available then the venue of arbitration shall remain New Delhi only.”

5. A perusal of the purchase order reveals that it explicitly refers to the Techno Commercial Proposal dated 07.11.2023. The said proposal is in fact appended to the purchase order and each page thereof including the arbitration clause is duly signed by the respondent and also contains an endorsement to the effect that it has been ‘read and accepted’.

6. Disputes having arisen between the parties, an invocation notice dated 18.06.2024 was sent by the petitioner to the respondent. However, the same was not responded to. Consequently, the present petition has come to be filed.

7. On 05.08.2024, notice was issued by this Court, taking into account the background of the purchase order and the fact that the Techno Commercial Proposal, appended thereto, contains an arbitration clause and also contains the acknowledgment that the same has been ‘read and accepted’ by the respondent. This Court took note of the contentions of the learned counsel for the petitioner that existence of the arbitration agreement stands uncontroverted.



8. On 28.10.2024, Mr. Avtar Singh, Advocate appeared on behalf of the respondent and sought some time to file a reply. Consequently, two weeks time was granted to the respondent to file a reply. However, no reply has been filed by the respondent; there is also no appearance on behalf of the respondent today despite pass over.

9. In the circumstances, the present petition has been taken up for hearing and disposal, in the absence of the respondent.

10. Since the existence of the arbitration agreement is *prima facie* evident based on the aforesaid facts and circumstances, there is no impediment to constituting an Arbitral Tribunal to adjudicate the disputes between the parties.

11. As mandated in terms of the Judgment in ***SBI General Insurance Co. Ltd. v. Krish Spinning***, 2024 INSC 532, and ***Interplay between Arbitration Agreements under the Arbitration & Conciliation Act, 1996 & the Indian Stamp Act, 1899***, 2023 SCC OnLine SC 1666, the scope of enquiry in the present proceedings is restricted to ascertaining the *prima facie* existence of an arbitration agreement. In the present case, the initial threshold has been crossed by the petitioner.

12. Accordingly, Ms. Shobhana Takiar, Advocate (Mob. No.: +91 9810962950) is appointed as the Sole Arbitrator to adjudicate the disputes between the parties.

13. The respondent shall be entitled to raise appropriate objections as regards arbitrability/jurisdiction, if any, before the learned sole arbitrator which shall be duly considered and decided by the learned sole arbitrator before adjudication of the claim/s on merits.

14. The learned Sole Arbitrator may proceed with the arbitration



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proceedings subject to furnishing to the parties the requisite disclosure as required under Section 12 of the A&C Act.

15. The learned Sole Arbitrator shall be entitled to fee in accordance with the IVth Schedule of the A&C Act; or as may otherwise be agreed to between the parties and the learned Sole Arbitrator.

16. All rights and contentions of the parties in relation to the claims/counter-claims are kept open, to be decided by the learned Arbitrator on their merits, in accordance with law.

17. The present petition stands disposed of.

SACHIN DATTA, J

NOVEMBER 28, 2024/uk