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

\+ ARB.P. 1251/2023

SWASTIK PIPE LTD .....Petitioner

Through: Mr. Sanjay Jain and Ms. Ankita Kedia, Advs.

versus

SHRI DINESH SACHDEVA SOLE PROPRIETOR M/S MODERN ENGINEERING WORKS .....Respondent

Through:

CORAM:
HON'BLE MR. JUSTICE C. HARI SHANKAR

O R D E R (ORAL)

% **19.09.2024**

1. This is a petition under Section 11(6) of the Arbitration and Conciliation Act, 1996[1], seeking reference of the disputes between the parties to arbitration.

2. The arbitration clause contained claims of the petitioner against the respondent, relatable to eight tax invoices, and involving a total claim of ₹ 17,97,274/-. Each of the invoices envisages resolution of disputes by arbitration. The arbitration clause, which is identical in all the invoices, read thus:

> "2. All disputes, touching and/or concerning this bill, shall be, solely resolved by an arbitrator duly appointed by the Hon'ble Delhi High Court under The Arbitration and Conciliation Act, 1996, as amended upto date or any repeal thereof. The seat of arbitration shall be Delhi and shall be solely and exclusively subject to Delhi Jurisdiction. The language of arbitration proceedings shall be English."

[1] "the 1996 Act", hereinafter

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3. As the amounts covered by the aforesaid invoices remained unpaid, the petitioner raised a dispute and issued a notice to the respondent under Section 21 of the 1996 Act on 13 June 2022, seeking reference of the disputes to arbitration.

4. The notice was sent at the last known address of the respondent, as reflected in its GST[2] returns filed with the GST Authorities. However, it was returned with the postal remarks that the addressee had left and was not available at the said address.

5. The petitioner has, therefore, approached this Court under Section 11(6) of the 1996 Act, seeking reference of the disputes to arbitration.

6. The notice issued by this Court has also been returned with a postal endorsement stating that the addressee was not available at the address contained in the memo of parties.

7. However, as the address is the last known address of the respondent, and corroborates with the address in the GST return filed by the respondent, service has to be deemed to have been effected.

8. That apart, in a Section 11 petition, the Court is only required to examine whether an arbitration agreement exists between the parties and whether the Section 11 petition has been filed within three years

[2] Goods and Service Tax

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of the Section 21 notice.

9. Both these requirements stand satisfied in the present case.

10. The claim of the petitioner appears to be in the region of ₹ 18 lakhs.

11. Accordingly, this court appoints Mr. Amarjeet Singh, Advocate, (Tel: 9911111950) as the arbitrator to arbitrate on the disputes between the parties.

12. The learned arbitrator shall be entitled to charge fees as per the Fourth Schedule to the 1996 Act.

13. The learned arbitrator is also requested to file the requisite disclosure under Section 12(2) of the 1996 Act within a week of entering on the reference.

14. All questions of fact and law remain open to be agitated in the arbitral proceedings.

15. 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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