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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**+ **O.M.P.(I) (COMM.) 254/2024 and I.A. 35579/2024****NUCON INDIA PVT LTD**

.....Petitioner

Through: Mr. Satyender Chahar,
Advocate

versus

ARPITAM BUILDERS LLP

.....Respondent

Through: Mr. Akshat Vachher, Ms.
Abhiti Vachher and Mr. Aman Vachher,
Advocates**CORAM:****HON'BLE MR. JUSTICE C.HARI SHANKAR****JUDGMENT (ORAL)**

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06.08.2024

1. This is a petition filed under Section 9 of the Arbitration and Conciliation Act, 1996¹ arising in the context of a Contract Agreement executed between the petitioner and the respondent on 18 May 2023, whereunder the petitioner was engaged by the respondent to carry out certain constructions on land belonging to the respondent. By this petition, the petitioner has alleged that, owing to defaults on the part of the respondent, the work could not progress as per the contracted schedule. It is further alleged that the respondent had also failed to clear the running bills raised by the petitioner in time. Needless to say, the communications to this effect, addressed by the petitioner to the respondent, were refuted by the respondent in its reply.

¹ "the 1996 Act" hereinafter



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2. The respondent contends, *per contra*, that any delay in performing the work is attributable to the petitioner, and that there is no default on the part of the respondent.

3. The Contract Agreement was terminated by the respondent on 6 April 2024. The petitioner alleges that this termination is also in violation of the covenants of the Contract Agreement and could not, in any case, have been effected while the petitioner's bills still remain unpaid.

4. It is also alleged in the petition that the respondent has defaulted in its responsibility of conducting joint measurements with the petitioner of the work carried out at the site, and that, in the absence of such joint measurement, the petitioner was hindered in raising a final bill.

5. Learned counsel for the petitioner further exhorted on the Court to appoint a Local Commissioner to visit the premises of the respondent, so as to confirm that the work stated to have been carried out by the petitioner as raised in its 14th and 15th RA bills, was actually carried out and also to facilitate return of the equipment of the petitioner lying in the respondent's premises.

6. The petitioner relies on Document 33 filed with this petition which, according to this petitioner, inventorizes the goods of the petitioner lying in the respondent's premises.



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7. It is clear that the issues raised in this petition are debatable and would require a comparative analysis of the material on record. The petitioner has already instituted Arb. Pet. 680/2024, in which notice stands issued, returnable on 27 August 2024. However, it was suggested by the Court that keeping in view the fact that the scope of examination by a Court exercising jurisdiction under Section 11(6) of the 1996 Act is now restricted, after the recent judgment of the Supreme Court in *SBI General Insurance Co Ltd v. Krish Spinning*² to verifying whether there is an arbitration agreement in existence between the parties, it would not be more appropriate to appoint an Arbitrator to arbitrate on the disputes between the parties and refer the present petition to the Arbitrator to be treated as an application under Section 17 of the 1996 Act.

8. Learned counsel for the respondent has no objection to this course of action, provided all contentions of the respondent are left open to be agitated before the learned Arbitrator.

9. The claim of the petitioner against the respondent is stated to be in the region of ₹1.5 Crores.

10. Accordingly, this Court appoints Ms. Prem Lata Bansal, Senior Advocate (Tel. 9811558194) as the Arbitrator to arbitrate on the disputes between the parties.

² 2024 SCC OnLine SC 1754



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11. The arbitration would take place under the aegis of the Delhi International Arbitration Centre (DIAC) and would abide by its rules and regulations. The learned arbitrator shall be entitled to fees as per Schedule of Fees maintained by the DIAC.

12. 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 reference.

13. The present petition is relegated for decision by the learned Arbitrator treating it as an application under Section 17 of the 1996 Act.

14. Given the urgency of the matter, the learned Arbitrator is requested to dispose of this petition, treating it as an application under Section 17 of the 1996 Act, as expeditiously as possible, and preferably within two weeks of entering on reference, in accordance with law and after hearing both sides.

15. All questions of fact and law are left open to be adjudicated before the learned Arbitrator who would take a decision thereon in accordance with law. This Court has not expressed any opinion on the issue in controversy either preliminary or on the merits of the matter.

16. In order to expedite matters, the respondent is directed to file a reply to this petition before the learned Arbitral Tribunal within a week of the learned Arbitrator entering on reference.



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17. The petition is disposed of in the aforesaid terms.

C.HARI SHANKAR, J

AUGUST 6, 2024/yg

Click here to check corrigendum, if any