



\$~8

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

+ **ARB.P. 1280/2023**

TEKNOW OVERSEAS PVT LTD

..... Petitioner

Through: Mr. Sumeet Lall, Mr. Sidhant Kapoor,
Mr. Nikhil Lal, Ms. Aashrita
Sachdeva, Advs.

versus

BHARAT HEAVY ELECTRICALS LIMITED Respondent

Through: Mr. Arvind Chaudhary, Adv.

CORAM:

HON'BLE MR. JUSTICE JASMEET SINGH

ORDER

30.01.2024

%

1. This is a petition seeking appointment of an Arbitrator under Section 11 of the Arbitration and Conciliation Act, 1996 to adjudicate the disputes between the parties.
2. The Arbitration Clause is contained in Clause 23 of the Work Order dated 30.04.2013, which reads as under:-

“23. ARBITRATION :

Except where otherwise provided for in the contract all questions & disputes relating to the meaning of the specification designs, drawings and instruction herein before mentioned and as to the quality of workmanship or materials used on the work or as to any other question, claim, right, matter or thing whatsoever in any way arising out of or relating to the contract, designs, drawings specifications,



*estimates, instructions, orders of these conditions or otherwise concerning the works, of the execution or failure to execute the same whether arising during the progress of the work or after the completion or abandonment thereof shall be referred to the sole arbitration of the Head TBG, BHEL, New Delhi and if the Head TBG is unable or unwilling to act, to the sole arbitration of some other person *appointed by the Head TBG willing to act as such arbitrator.*

There will be no objection if the arbitrator so appointed is an employee of BHEL, New Delhi and that he had to deal with the matters to which the contract relates and that in the course of his duties as such he had expressed views on all or any of the matters in dispute of difference. The arbitrator to whom the matter is originally referred being transferred or vacating his office or being unable to act for any reason such Head TBG as aforesaid at the time of such transfer vacation of office or inability to act shall appoint (see note) another person to act as arbitrator in accordance with the terms of the contract such person shall be entitled to proceed with the reference from the stage at which it was left by his predecessor. It is also a term of this contract that no person other than a person appointed by such Head TBG as aforesaid should act as arbitrator and if for any reason that is not possible the matter is not to be referred to arbitration at all, in all cases where the amount of the claim dispute is Rs. 50,000/- (Rupees fifty thousand) and above the arbitrator shall give reasons for the award.

Subject as aforesaid the provisions of the arbitration Act, 1940 or any statutory modification or re-enactment thereof and the rules made there under and the time being in force shall apply to the arbitration proceeding under this clause.

It is a term of the contract that the party involving arbitration shall specify the dispute or disputes to be referred to arbitration under this clause together with the amounts claimed in respect of each dispute.

The arbitrator (s) may from time to time with consent of the parties enlarge the time for making and publishing the award.

The work under the contract shall, if reasonably possible, continue during the arbitration proceedings and no payment



due or payable to the contractor shall be withheld on account of such proceedings.

The Arbitrator shall be deemed to have entered on the reference on the date he issues notice to both the parties fixing the date of the first hearing.

The Arbitrator shall give a separate award in respect of each dispute or difference referred to him.

The Venue of arbitration shall be such place as may be fixed by the Arbitrator in his sole discretion.

The award of the arbitrator shall be final, conclusive and binding all parties to this contract. Laws governing the Contract:

The contract shall be governed by the Indians Laws for the time being in force.

NOTE:-The Authority appointing the arbitrator should not be lower in rank than the Authority accepting the Agreement.”

3. The respondent on 17.08.2018 sought to make a recovery of Rs. 32,49,977/- from the bill of the petitioner.
4. Since the petitioner was aggrieved by non- payment of the said outstanding dues, the petitioner approached MSME facilitation centre under the provisions of Micro, Small and Medium Enterprises Development Act, 2006.
5. In 2020, the MSME Council referred the disputes to the Delhi International Arbitration Centre and the arbitrator *vide* award dated 19.07.2023 observed as under:-

“11.10 Therefore, without commenting on the merits of the Claims, the Tribunal is of the view that the Claimant has wrongly invoked the power of the MSEFC under the MSMED Act, and the present Arbitral Tribunal does not have the jurisdiction to adjudicate on the claims as claimed by the Claimant.

11.11 In view of the above the claims as claimed by the



Claimant are rejected for the reason that the Arbitral Tribunal does not have the jurisdiction to decide upon the same.

11 .12 It is clarified that the Arbitral Tribunal has not dealt with the merits of the claims and defences of Respondent as the Tribunal does not have jurisdiction to decide the present case and reference to the facts and documents of parties for the limited purpose for deciding the issue of jurisdiction. The Claimant is at liberty to avail its legal remedy as available in law.”

6. Pursuant to the said liberty, the petitioner has filed the present petition.

7. Mr. Chaudhary, learned counsel appearing for the respondent states that the claim of the petitioner is barred by limitation.

8. However, the disputes according to the petitioner arose on 17.08.2018, wherein the respondent sought to deduct money from the bill of the petitioner.

9. Within three years, the petitioner approached the MSME, as mandated in Article 137 of the Limitation Act, 1963.

10. The arbitrator appointed by the MSME Council on 19.07.2023 was of the view that the petitioner be granted liberty to avail its legal remedy as available in law.

11. Immediately thereafter, the petitioner has approached this Court for seeking appointment of an Arbitrator.

12. For the said reasons, I am of the view that the petition filed by the petitioner is within the period of limitation and needs to be allowed.

13. The petition is allowed. Since the parties are having disputes between them, the following directions are issued:-

i) Mr. Justice B.B. Parsoon (Retd. Judge, Punjab and



Haryana High Court) (Mob. No. 9999688558, 8558809906) 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.

14. The petition is allowed and disposed of in the aforesaid terms.

JASMEET SINGH, J

JANUARY 30, 2024/NG

Click here to check corrigendum, if any