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IN THE HIGH COURT OF DELHI AT NEW DELHI

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ARB.P. 1250/2024

M/S SB EQUIPMENTS LLP

.....Petitioner

Through: Mr. Vibhor Garg, Ms. Diksha Kakkar,
Advts.

versus

MINISTRY OF DEFENCE, GOVERNMENT OF INDIA
THROUGH DIRECTORATE GENERAL ARMED FORCE
MEDICAL SERVICES

.....Respondent

Through: Mr. Vikram Jaitley, CGSC with Ms.
Shreya Jaitley, Adv. and Mr. Aakash
Pathak, GP

CORAM:

HON'BLE MR. JUSTICE JASMEET SINGH

ORDER

05.11.2024

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1. This is a petition filed under Section 11(6) of the Arbitration and Conciliation Act, 1996, seeking appointment of an Arbitrator to adjudicate the disputes between the parties.
2. The facts are that the respondent floated a Tender No. 17559/SPL-2594/DGAFMS/DG-2F on 27.12.2016 for which the petitioner placed their bid and being the highest bidder was awarded the contract.
3. Thereafter, the respondent issued a Supply Order No. 17559/SPL/2594/D-15/DGAFMS/DG-2F on 15.01.2018 whereby the respondent placed an order of procurement of a total of 2168 units of FAK CW Type A Mark 1 (First Aid kits).



4. The arbitration clause is contained as clause 3 under Part III of the Supply order as per which the format of the Arbitration clause is provided under Form DPM – 7 and the same reads as under:

“3. Arbitration - All disputes or differences arising out of or in connection with the Supply Order shall be settled by bilateral discussions. Any dispute, disagreement or question arising out of or relating to the Supply Order or relating to construction or performance, which cannot be settled amicably, may be resolved through Arbitration. The Arbitration is as per Form DPM-7 (for indigenous trade) / DPM-8 (for foreign supplies) / DPM-9 (for PSUs) enclosed to Part-III of this Supply Order.”

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FORM DPM-7

Format of Arbitration Clause - Indigenous Private Bidders

(i) All disputes or differences arising out of or in connection with the present contract including the one connected with the validity of the present contract or any part thereof should be settled by bilateral discussions.

(ii) Any dispute, disagreement of question arising out of or relating to this contract or relating to construction or performance (except as to any matter the decision or determination whereof is provided for by these conditions), which cannot be settled amicably, shall within sixty (60) days or such longer period as may be mutually agreed upon, from the date on which either party informs the other in



writing by a notice that such dispute, disagreement or question exists, will be referred to a sole Arbitrator.

(iii) Within sixty (60) days of the receipt of the said notice, an arbitrator shall be nominated in writing by the authority agreed upon by the parties.

(iv) The sole Arbitrator shall have its seat in New Delhi or such other place in India as may be mutually agreed to between the parties.

(v) The arbitration proceedings shall be conducted under the Indian Arbitration and Conciliation Act, 1996 and the award of such Arbitration Tribunal shall be enforceable in Indian Courts only.

(vi) Each party shall bear its own cost of preparing and presenting its case. The cost of arbitration including the fees and expenses shall be shared equally by the parties, unless otherwise awarded by the sole arbitrator.

(vii) The parties shall continue to perform their respective obligations under this contract during the pendency of the arbitration proceedings except in so far as such obligations are the subject matter of the said arbitration proceedings”

5. It is stated that certain payments were made by the respondent but still there are amounts outstanding in terms of the supply order.

6. The petitioner invoked Arbitration *vide* legal notice dated 25.04.2024, however the respondent did not respond to the said notice. Hence the present petition has been filed.



7. Notice in the present petition was issued on 13.08.2024 and the respondent was granted 4 weeks to file a reply, however no reply has been filed till date.

8. Mr. Jaitley, learned CGSC states that the claims of the petitioner are barred by limitation and are also not maintainable.

9. However, he fairly agrees that all these issues can be decided by the learned Arbitrator.

10. For the said reasons, the petition is allowed and the following directions are issued:-

- i) Mr. Arjun Pant, Adv. (Mob. No. 9811071260) 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').
- iii) The remuneration of the learned Arbitrator shall be in terms of DIAC (Administrative Cost and Arbitrators' Fees) Rules, 2018.
- iv) The learned Arbitrator is requested to furnish a declaration in terms of Section 12 of the Act prior to entering into the reference.
- v) 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/counter-claims and merits of the dispute of either of the parties, are left open for adjudication by the learned arbitrator.



vi) The parties shall approach the learned Arbitrator within two weeks from today.

11. The present petition is disposed of in the aforesaid terms.

NOVEMBER 5, 2024/sp

JASMEET SINGH, J

Click here to check corrigendum, if any