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

+ ARB.P. 1286/2024 & I.A. 37003/2024

MOONWALK INFRA PROJECTS PVT LTDPetitioner

Through: Mr. Rajeev Kumar & Mr. Arpit
Sharma, Advocates.

versus

M/S R S CONSTRUCTION & ORS.Respondents

Through: Mr. Prashant Kumar & Mr.
Deepak Maan, Advocates.

CORAM:

HON'BLE MR. JUSTICE PRATEEK JALAN

ORDER

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22.08.2024

I.A. 37002/2024(Exemption)

Exemption allowed, subject to all just exceptions.

The application stands disposed of.

ARB.P. 1286/2024

1. Issue notice. Mr. Prashant Kumar, learned counsel for the respondents, accepts notice.
2. By way of this petition under Section 11 of the Arbitration and Conciliation Act, 1996 [“the Act”], seeks appointment of an arbitrator to adjudicate disputes between the parties under an undated Purchase Order [Annexure P-4 to the petition], stated to have been issued by the respondents on 24.01.2022, for a construction project at Bela Industrial Area, Muzaffarpur, Bihar. The Purchase Order was issued pursuant to multiple techno-commercial offers made by the petitioner with respect to



phases 1, 3, 4A and 4B of the project.

3. The techno-commercial offers contain identical arbitration clauses, which are in the following terms:

“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 India Arbitration and Conciliation Act, and the venue of the arbitration will be Delhi, India.”

4. Disputes having arisen between the parties, the petitioner invoked arbitration by a letter dated 01.11.2023 and also instituted proceedings under Section 9 of the Act before the District Judge (Commercial Court), Central, Tis Hazari Courts, Delhi, in which an interim order was passed on 20.12.2023. The Section 9 petition was disposed of on 04.05.2024.

5. Mr. Kumar appears on behalf of the respondent on advance notice, and submits that the existence of the arbitration clause is not disputed and the respondent also has substantial counterclaims against the petitioner. However, he submits that the seat of arbitration in the present case is in Begusarai, Bihar. This contention is based upon a notation on the letterhead of respondent No. 1: “*All subject to Begusarai Jurisdiction*”. The Purchase Order was issued by the respondent No. 1 on the said letterhead.

6. It is agreed between the parties that the present petition may be disposed of without any adjudication on merits, as both parties are agreeable to a reference of the disputes to arbitration, while leaving the question as to the seat of arbitration for determination by the learned



arbitrator, in accordance with law.

7. In view of the above submissions and with the consent of learned counsel for the parties, Mr. Prabhav Ralli, Advocate [Tel: 9999249666] is appointed as the arbitrator to adjudicate the disputes between the parties. The arbitration will be held under the aegis of Delhi International Arbitration Centre, Delhi High Court, Shershah Road, New Delhi [“DIAC”], and will be governed by the Rules of DIAC, including as to the remuneration of the learned arbitrator.

8. The learned arbitrator is requested to furnish a declaration under Section 12 of the Act, prior to entering upon the reference.

9. It is made clear that this will not constitute a determination of the seat of arbitration, which may be determined by the learned arbitrator in accordance with law. All rights and contentions of the parties are reserved.

10. The petition stands disposed of in these terms.

PRATEEK JALAN, J

AUGUST 22, 2024

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