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

+ **ARB.P. 1314/2024**

MIDEAST PIPELINE PRODUCTS

.....Petitioner

Through: Mr. Sri Harsha Peechara, Mr. S.P.
Mukherjee, Mr. D. Subrahmanya &
Mr. Avinash Shukla, Advocates.

versus

GAIL INDIA LIMITED

.....Respondent

Through: Mr. Ravinder Agarwal & Mr. Lekh
Raj Singh, Advocates.

CORAM:

HON'BLE MR. JUSTICE PRATEEK JALAN

ORDER

11.09.2024

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1. The petitioner has filed this petition under Section 11 of the Arbitration and Conciliation Act, 1996 [“the Act”] for appointment of an arbitrator to adjudicate disputes between the parties, pursuant to a letter of acceptance of tender dated 21.10.2014. The special conditions of contract provide for dispute resolution and arbitration in Clause 56. The clause provides for conciliation, failing which the disputes are to be adjudicated by arbitration of a sole arbitrator. Courts in Delhi have been vested with exclusive jurisdiction under the agreement.

2. Mr. Ravinder Agarwal, learned counsel, has entered appearance on behalf of the respondent, pursuant to notice issued on 27.08.2024, and has also filed a reply, a copy whereof has been handed up in Court and is taken on record.

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3. The two contentions raised by the respondent are that the present petition, under Section 11 of the Act, is barred by limitation and that the substantive claims of the petitioner are also barred by limitation.

4. I have heard learned counsel for the parties.

5. As far as the aspect of limitation *vis a vis* the substantive claims are concerned, it has been made clear in the recent judgments of the Supreme Court, that this is an aspect to be left to the arbitral tribunal and the referral Court has no jurisdiction to entertain an argument of this nature. A limited jurisdiction in this regard had been conferred upon the referral Court by several earlier judgments, including *Vidya Drolia v. Durga Trading Corpn.*, [(2021) 2 SCC 1] and *BSNL v. Nortel Networks (India) (P) Ltd.* (2021) [5 SCC 738], *M/s Arif Azim Co. Ltd. v. M/s Aptech Ltd.* [judgment dated 01.03.2024 in Arb. P. 29/2023], etc. However, in light of the seven Judge decision in *Interplay Between Arbitration Agreements under A&C Act, 1996 & Stamp Act, 1899, In re* [(2024) 6 SCC 1], the Supreme Court held in *SBI General Insurance Co. Ltd. v. Krish Spinning* [2024 SCC OnLine SC 1754] that the only question to be adjudicated by the referral Court is with regard to *prima facie* existence of an arbitration agreement. The question of limitation with regard to substantive claims is to be left for adjudication by the learned arbitral tribunal, consistent with the principle of *Kompetenz-Kompetenz*.

6. Turning to the question of limitation as far as the present petition is concerned, Mr. Agarwal submits that a notice invoking arbitration was first issued by the petitioner on 16.12.2017 and the period of limitation of three years therefore expired in January, 2021. He states that the present petition has been executed after the expiry of the period of limitation thereafter.



7. Mr. Sri Harsha Peechara, learned counsel for the petitioner, however, points out that the parties thereafter entered into conciliation proceedings. A copy of a communication from the respondent dated 15.03.2018, inviting the petitioner for a Samadhan session being organised to take up the grievances of vendors, has been annexed to the petition. Following this, further invitations for Samadhan sessions were sent by the respondent, with the objective of resolving disputes by one-to-one interactions, in a time bound manner, by communications dated 30.11.2018, 25.01.2019, 20.05.2019 and 19.01.2020. The last of these meetings was held on 22.01.2020. Further, the petitioner has annexed copies of communications from the respondent, dated 16.01.2018, 09.04.2019, 16.04.2020, 12.04.2021, 30.04.2022 and 24.03.2023, acknowledging its liability to the petitioner.

8. Mr. Peechara points out that the petitioner's claims were finally refuted by the respondent only by a letter dated 17.10.2023, in view of which arbitration was invoked on 26.10.2023.

9. On consideration of the aforesaid facts, I am of the view that the cause of action for approaching the Court for appointment of an arbitrator arose only upon failure of the conciliation proceedings held in terms of the agreement. The present petition is therefore within limitation.

10. The existence of the arbitration clause being undisputed, the disputes between the parties are referred to the arbitration of Hon'ble Ms. Justice Hima Kohli, former Judge of Supreme Court of India [Tel: 9871300036]. The arbitration will be held under the aegis of Delhi International Arbitration Centre ["DIAC"] and will be governed by the Rules of DIAC, including as to remuneration of the learned Arbitrator.

11. The learned Arbitrator is requested to furnish a declaration under



Section 12 of the Act, prior to entering upon the reference.

12. All rights and contentions of the parties are left open for adjudication before the arbitral tribunal.

13. The petition stands disposed of accordingly.

PRATEEK JALAN, J

SEPTEMBER 11, 2024

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