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

+ **ARB.P. 2/2024**

SAURABH METALS PVT. LTD

..... Petitioner

Through: Ms. Henna George and Ms. Purti
Gupta, Advocates.

versus

THE DIRECTOR RAILWAY STORES (M)

..... Respondent

Through: Mr. Vineet Dhanda, CGSC.

CORAM:

HON'BLE MR. JUSTICE PRATEEK JALAN

ORDER

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05.01.2024

1. By way of this petition, under Section 11 of the Arbitration and Conciliation Act, 1996, the petitioner seeks appointment of an arbitrator to adjudicate disputes between the parties under a Development Order dated 29.12.2021, for the manufacture of axles. Clause 14 of the Order provides for arbitration under Clause 2900 of Indian Railway Standard Conditions of Contract. It provides for arbitration by an officer to be appointed by the designated authority of the Indian Railways.

2. Ms. Purti Gupta, learned counsel for the petitioner, submits that in view of the decisions of the Supreme Court in *TRF Limited vs. Energo Engineering Projects Limited* [(2017) 8 SCC 377] and *Perkins Eastman Architects DPC & Anr. vs. HSCC (India) Limited* [(2020) 20 SCC 760], and other judgments following them, unilateral appointment of an arbitrator by a party to a contract is impermissible. She, therefore, seeks the appointment of an independent arbitrator.

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3. The petitioner has invoked arbitration by a letter dated 24.07.2023. However, the request has been declined by the respondent's communication dated 24.11.2023, on the ground that the dispute has already been decided by this Court. Reference has been made to a judgment of this Court dated 12.07.2023.

4. Pursuant to notice issued on 03.01.2024, Mr. Vineet Dhanda, learned Central Government Standing Counsel, enters appearance on behalf of the respondent. He submits that the only ground for denial of reference to arbitration taken in the respondent's communication dated 24.11.2023 is the proceeding before this Court in W.P.(C) 8456/2023 [*Saurabh Metals Pvt. Ltd vs. Union of India & Ors.*] filed by the petitioner seeking an injunction against encashment of a performance bank guarantee.

5. The aforesaid writ petition was dismissed by a judgment dated 12.07.2023 on the ground that the petitioner had not made out a case for grant of an injunction against encashment of an irrevocable and unconditional bank guarantee. It was specifically noted that the parties would be free to avail their contractual remedies in respect of their claims and counter claims, if any. The petitioner's appeal against the aforesaid judgment (LPA 557/2023) was rejected by the Division Bench *vide* judgment dated 18.07.2023.

6. Having heard the learned counsel for the parties, I am of the view that the contention taken by the respondent in its communication dated 24.11.2023 is wholly misconceived. The denial of an injunction against enforcement of a bank guarantee does not prejudice the petitioner's contractual claims, including for restitution for any amount recovered by



the respondent in terms of the bank guarantee.

7. The existence of the arbitration agreement and the invocation thereof are not disputed by the respondent. Having regard to the judgements of the learned Supreme Court in *TRF Limited* (supra) and *Perkins Eastman* (supra), and other judgments following them, the contractual provision for unilateral appointment of an arbitrator is impermissible. I am, therefore, of the view that the petitioner has made out a case for appointment of an arbitrator, and all rights and contentions of the parties on merits may be left open for adjudication by the learned Arbitrator.

8. The petition is, therefore, allowed and the parties are referred to arbitration. With the consent of learned counsel for the parties, it is directed that 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 remuneration of the learned Arbitrator. DIAC is requested to nominate an arbitrator from its panel. 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 Court has not adjudicated the rights and contentions of the parties on merits, which are reserved for adjudication by the learned Arbitrator.

10. The petition is disposed of with these directions.

PRATEEK JALAN, J

JANUARY 5, 2024/SS/