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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**+ **ARB.P. 31/2024****SERVOTECH ELECTRICALS PVT LTD**PetitionerThrough: Mr. Rakesh Kumar and Mr.
Ankit Kumar, Advocates

versus

BENNETT UNIVERSITYRespondentThrough: Mr. Ashish Verma & Mr.
Kartikay Bhargava, Advs.**CORAM:****HON'BLE MR. JUSTICE C. HARI SHANKAR****JUDGMENT (ORAL)**% **23.08.2024**

1. This is a petition under Section 11(6) of the Arbitration and Conciliation Act, 1996¹ for reference of disputes between the parties to arbitration.

2. The respondent placed a purchase order dated 31 March 2020 on the petitioner, whereunder the petitioner had to carry out certain electrical works at the respondent's premises.

3. Disputes surfaced. The petitioner sent a notice dated 14 August 2023, under Section 21 of the 1996 Act, requesting the respondent to appoint a sole arbitrator. However, the respondent failed to do so. The petitioner has accordingly moved this court under Section 11(6) of the

¹ "the 1996 Act" hereinafter



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1996 Act for reference of the disputes to arbitration.

4. The arbitration clause as envisaged in the work order reads as under :

“Arbitration : If Owner and Contractor have exhausted all reasonable means to settle a claim or dispute, the matter shall be referred to arbitration under the current *rules of the Indian Council of Arbitration*², *New Delhi/Latest Arbitration Act in India*. Arbitration proceedings shall be held at the offices of the Indian Council of Arbitration, New Delhi. Courts in New Delhi alone shall have jurisdiction in incidental matters. The prevailing party in any arbitration proceedings shall be reimbursed by the other party for all costs, expenses and charges, including, without limit, reasonable attorneys’ fees, incurred by the said prevailing party; provided, however, the fees paid to the arbitrators shall be shared equally by the Owner and Contractor. If required, sole arbitrator will be appointed with the consent of the Contractor. In case ESIC/PF is applicable, Contractor need to attach below mentioned documents along with their invoice so as to enable our Personnel Dept. to verify statutory compliance.”

5. Mr. Verma, learned counsel for the respondent submits that this petition is not maintainable as the petitioner has not exhausted the pre-arbitral protocol envisaged in the arbitration agreement. Additionally, he submits that the disputes raised by the petitioner pertain to alleged theft, which is not arbitrable.

6. In so far as the second argument is concerned, Mr. Ankit Kumar, learned counsel for the petitioner correctly submits that the issue of whether the dispute is arbitrable under the agreement between the parties is one which has to be decided by the Arbitral Tribunal. There can be no cavil with this proposition, given the recent position

² “the ICA” hereinafter



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of law enunciated by the Supreme Court in *SBI General Insurance Co Ltd v Krish Spinning*³. As such, the issue of whether the dispute between the parties is arbitrable under the agreement between them is something which would have to be decided by the Arbitral Tribunal.

7. Apropos the first ground of challenge raised by Mr. Verma, Mr. Ankit Kumar, learned counsel for the petitioner, points out that the arbitration clause between the parties provides a choice to the parties seeking reference of the dispute to arbitration, either to the conduct of the arbitration as per the Rules of the ICA or as per the “latest Arbitration Act in India”. He submits that in exercise of the said choice, provided by the agreement, the petitioner has opted for the arbitration to be conducted in accordance with the 1996 Act.

8. To this submission, Mr. Verma contends that the 1996 Act also permits parties to resort to institutional arbitration. He submits that the arbitration clause has to be read holistically and that the reference to “latest Arbitration Act in India”, read with the stipulation that the dispute would be referred to arbitration under the Rules of the ICA indicate that the arbitration has necessarily to be conducted under the ICA and its Rules. This position, he submits, is underscored by the further stipulation in the said clause requiring fixing the venue of the arbitration as the office of the ICA. If the petitioner’s argument is accepted, the stipulation that the arbitral proceedings would be held at the office of the ICA would be rendered otiose.

³ 2024 SCC OnLine SC 1754



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9. Having perused the arbitration clause, it is, at the very least, ambiguous. If there is such an ambiguity, the petitioner cannot be denied the benefit thereof. The opening sentence of the clause clearly suggests that there is an option with the party seeking reference of the dispute to arbitration either to have the arbitration conducted under the current Rules of the ICA or under the 1996 Act. These two stipulations are separated by an oblique sign (/). The very use of the oblique sign indicates that they are to be regarded as alternatives to each other and that a party can exercise one or the other alternative.

10. Thus seen, the stipulation which follows, that the arbitral proceeding would be held at the office of the ICA has to be meaningfully interpreted as applying to a situation in which the parties exercise the option of the arbitration being conducted as per the Rules of the ICA. Whereas in the present case, the petitioner has opted to have the arbitration conducted in accordance with the 1996 Act, the requirement of the arbitral proceedings being held at the office of the ICA would obviously not apply.

11. In that view of the matter, I do not find myself in agreement with Mr. Verma that the present petition is not maintainable.

12. As already noted, the Supreme Court has held that, while exercising jurisdiction under Section 11(6) of the 1996 Act, the Court is only required to examine whether there exists an arbitration agreement between the parties and whether the Section 11(6) petition has been filed within three years of the Section 21 notice.



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13. Both these issues are answerable in the affirmative in the present case.

14. The parties having not been able to arrive at a consensus regarding arbitration, the Court has necessarily to step in.

15. The claim in the dispute is stated to be in the region of ₹40 Lakhs.

16. Accordingly, this Court appoints Mr. R. Gowrishankar, Advocate (Mob: 9999046948) as the arbitrator to arbitrate on the dispute between the parties.

17. The learned arbitrator shall be entitled to fees as per the Fourth schedule of the 1996 Act.

18. The learned arbitrator is also requested to file requisite disclosure under Section 12(2) of the 1996 Act within a week of entering on the reference.

19. The petition stands allowed in the aforesaid terms.

C. HARI SHANKAR, J

AUGUST 23, 2024/yg

Click here to check corrigendum, if any