



2024:DHC:4260



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**% *Date of decision: 21st May, 2024*+ **ARB.P. 236/2024 & I.A. 4174/2024 (delay in filing)**

NEPAL SINGH Petitioner

Through: Mr. Amit Sharma, Adv.
versus

INDRAPRASTHA POWER GENERATION CO LTD

..... Respondent

Through: Mr. Varun Kalra and Mr. Krishan
Kumar, Advs.+ **ARB.P. 237/2024 & I.A. 4176/2024 (delay in filing)**

NEPAL SINGH Petitioner

Through: Mr. Amit Sharma, Adv.
versus

INDRAPRASTHA POWER GENERATION CO LTD

..... Respondent

Through: Mr. Varun Kalra and Mr. Krishan
Kumar, Advs.**CORAM:****HON'BLE MR. JUSTICE AMIT BANSAL****AMIT BANSAL, J. (ORAL)**

1. The present petitions have been filed under Section 11(6) of the Arbitration and Conciliation Act, 1996 (hereinafter the Act) seeking appointment of a sole arbitrator to adjudicate the disputes between the parties.

2. The petitioner, in his capacity as the proprietor of M/s Vikas



Electricals and Mechanical Company (hereinafter “Vikas Electricals”), had entered into two separate Agreements with the respondent for construction and maintenance works on 21st May, 2015 and 25th June, 2015, respectively.

3. Disputes arose between the parties in respect of the aforesaid agreements and the petitioner filed two suits for recovery of Rs.23 lacs and Rs.25 lacs before the learned Additional District Judge (ADJ), Tis Hazari Courts, Delhi. In the aforesaid suits, the respondent preferred applications under Section 8 of the Act, seeking reference of the disputes to arbitration, as per the Agreements between the parties. Accordingly, on 11th July, 2023, both the suits were withdrawn by the petitioner with a liberty to invoke arbitration proceedings.

4. The Arbitration Clause is contained in Clause 25 of the General Terms and Conditions for Contract (hereinafter “GTCC”), which was attached to both the Agreements executed between the parties. For the ease of convenience, Clause 25 of the GTCC is set out below:

“25. Arbitration

i) In the event of any question dispute of difference whatsoever arising under this contract or in connection therewith including any question relating to existence, meaning and interpretation of this contract or any alleged breach thereof the same shall be referred to the Sole Arbitrator, the MD of the IPGCL/PPCL or to a person appointed by him for the purpose. The arbitration shall be conducted in accordance with the provision of the Indian Arbitration and Conciliation Act, 1996.

...”

5. In terms of the aforesaid, the Managing Director (MD) of the respondent or his representative is to be appointed as the sole arbitrator to adjudicate upon the disputes of the parties.

6. Consequently, the petitioner sent two communications dated 28th July,





2023, whereby the arbitration clause was invoked in both the disputes. However, the respondent *vide* its reply dated 18th August, 2023 did not accede to the same.

7. Notice in the present petitions was issued on 22nd February, 2024 and the respondent was directed to file its reply. In terms of the aforesaid, the respondent has filed its reply, *albeit*, only in ARB.P. 237/2024.

8. In the reply filed on behalf of the respondent, it is stated, *inter alia*, that there exists no agreement between the parties as Vikas Electricals represented itself to be a government registered company and cannot be claimed as a sole proprietorship.

9. A perusal of the record reflects that no such objection was raised by the respondent in the applications filed under Section 8 of the Act. In any case, both the Agreements appear to have been signed by the petitioner in his capacity as the proprietor of Vikas Electricals.

10. Mr. Varun Kalra, learned counsel appearing on behalf of the respondent submits that he would have no objection if an independent arbitrator is appointed to adjudicate disputes between the parties. However, it is submitted that a retired Additional District Judge (ADJ) may be appointed as the sole arbitrator.

11. Learned counsel for the petitioner is agreeable to the same.

12. In view thereof, both the present petitions are allowed and the following directions are issued in this regard:

- i. Mr. Mahesh Chander Gupta, ADJ (Retd.) [+91-9910384727] is appointed as the sole arbitrator to adjudicate the disputes between the parties.



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- ii. The arbitration(s) 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 the DIAC Rules.
 - 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. The parties shall approach the learned Arbitrator within two weeks from today.
13. Copy of this order be sent to the Secretary, DIAC at email id-delhiarbitrationcentre@gmail.com.
14. The petitions are disposed of in the aforesaid terms.

**AMIT BANSAL
(JUDGE)**

MAY 21, 2024
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