



2024:DHC:8502



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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Date of Decision: 04.11.2024

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ARB.P. 1511/2024**M/S KALPATARU PROJECTS INTERNATIONAL LIMITED****.....Petitioner**

Through: Mr. Abhishek Birthray, Ms. Aparna Iyer, Ms. Aiswarya Sahu, Mr. Yogesh Dalal, Mr. Anant Shukla, Mr. Sunil Mittal Advs.

versus**GAIL (INDIA) LIMITED****.....Respondent**

Through: Mr. V.K. Garg Sr. Adv. along with Ms. Samiksha Godiyal, Mr. Tenzing Namgyal Bhutia, Mr. Karandeep Singh Rekhi, Mr. B.D. Rao Kundan, Mr. Tushar Agarwal, Advs.

CORAM:**HON'BLE MR. JUSTICE SACHIN DATTA****SACHIN DATTA, J. (ORAL)**

1. The present petition under Section 11(5) of the Arbitration and Conciliation Act, 1996 (hereinafter '*the A&C Act*') seeks appointment of a sole arbitrator to adjudicate the disputes between the parties.
2. The disputes between the parties have arisen in the context of an agreement for a work of "*Replacement of existing 18" Pipeline by 24" Pipeline from Chinchinada to Tatipaka to Kakinada Junction and Replacement of Existing 18" Pipeline by 18" Pipeline from Tatipaka to SV-1 PSP Lanka in KG Basin.*"
3. Admittedly, the agreement between the parties contain an arbitration



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clause which is in the following terms:-

“55.0 ARBITRATION

Clause No. 107.0 of GCC pertaining to Arbitration shall be replaced by the following:-

55.1. All disputes, controversies, or claims between the parties (except in matters where the decision of the Engineer-in-charge is deemed to be final and binding) which cannot be mutually resolved within the reasonable time shall be referred to Arbitration by sole arbitrator.

55.2. The Employer/Consultant shall suggest a panel of three independent and distinguished persons to the other party (Bidder/Contractor/Supplier/Buyer as the case maybe) to select any one among them to act as the Sole Arbitrator.

55.3. In the event of failure of the other party to select the sole arbitrator within 30 days from the receipt of the communication suggesting the panel of arbitrators, the right of selection of sole Arbitrator by the other party shall stand forfeited and the Employer/Consultant shall have discretion to proceed with the appointment of the sole Arbitrator. The decision of the Employer/Consultant on the appointment of Sole Arbitrator shall be final and binding on the parties.

55.4. The award of the Sole arbitrator shall be final and binding on the parties and unless directed/awarded otherwise by the Sole Arbitrator, the cost of arbitration proceedings shall be shared equally by the parties. The arbitration proceedings shall be shared equally by the Parties. The arbitration proceedings shall be in English, and the venue shall be at New Delhi, India.

55.5 Subject to the above, the provisions of (Indian) Arbitration & Conciliation Act, 1996 and the rules framed there under shall be applicable.

55.6 All the matters relating to this contract are subject to the exclusive jurisdiction of the Courts situated in the State of Delhi (India) “

4. Disputes having arisen between the parties, the arbitration was invoked by the petitioner *vide* notice dated 09.10.2023. Substantial correspondence was exchanged between the parties thereafter, including an attempt to resolve the dispute through conciliation. However, since the Arbitral Tribunal could not be constituted with mutual consent the present



petition has come to be filed.

5. After some hearing, with consent of respective counsel for the parties, Mr. Justice (Retd.) Pradeep Nandrajog, Former Chief Justice, Bombay High Court (Mobile No.:9818000130) is appointed as the Sole Arbitrator to adjudicate the disputes between the parties.

6. It is further agreed between the parties that the objections raised by the respondent as regards the non-maintainability/arbitrability of the claims sought to be raised *inter alia* on account of the fact that the petitioner has given a NOC to the respondent with regard to the very claims which are sought to be agitated, be decided by the learned Sole Arbitrator in accordance with law. The arbitrator shall make an endeavour to decide the issue at the very outset before adjudicating the disputes on merits. It is directed accordingly.

7. It is further agreed that the respondent shall be entitled to raise counter claims in accordance with law, including claims relating to applicability of Price Reduction Schedule (PRS).

8. Needless to say, the same shall also be subject to the objections that may be raised by the petitioner with regard to the maintainability/arbitrability in accordance with law.

9. The learned Sole Arbitrator may proceed with the arbitration proceedings subject to furnishing to the parties requisite disclosures as required under Section 12 of the A&C Act.

10. The learned Sole Arbitrator shall be entitled to fee in accordance with IVth Schedule to the A&C Act; or as may otherwise be agreed to between the parties and the learned Sole Arbitrator.

11. The parties shall share the arbitrator's fee and arbitral costs, equally.



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12. All rights and contentions of the parties in relation to the claims/counter-claims are kept open, to be decided by the learned Arbitrator on their merits, in accordance with law.
13. Needless to say, nothing in this order shall be construed as an expression of this Court on the merits of the case.
14. The present petition stands disposed of in the above terms.

SACHIN DATTA, J

NOVEMBER 4, 2024/uk