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

+ O.M.P.(I) (COMM.) 334/2024

ULTIMATE INTERNATIONAL PVT. LTD.Petitioner
Through: Mr. Kailash Chandra and Ms.
Poornima Gupta, Advocates
alongwith Directors, Ms. Richa
Bhardwaj and Ms. Sunita Bhandari.

versus

RHI MAGNESITA INDIA LTD.Respondent
Through: Mr. Jayant K. Mehta, Sr. Advocate
alongwith Mr. Adhish Sharma and
Mr. Nitin Pandey, Advocates.

CORAM:

HON'BLE MR. JUSTICE SACHIN DATTA

ORDER

% **21.10.2024**

1. The present petition under Section 9 of the Arbitration and Conciliation Act, 1996 (hereinafter '*the A&C Act*') has been filed by the petitioner in the background of the contract agreement dated 20.03.2024 executed between the parties in relation to the "design and build services" (the work) to be carried out at the respondent's premises located at the 19th and 20th Floor, Square Building's, Jacaranda Marg, DLF City Phase 2 Gurugram (Haryana).

2. It is alleged in the petition that the petitioner company completed the work on the 19th floor of the premises on 24.06.2024 in accordance with the agreement, alongwith certain additional works as per site requirements instructed by the respondent.

3. According to the petitioner, the respondent was requested to take over the completed work of 19th floor on several occasions. It is further submitted that substantial work has also been carried out by the petitioner on the 20th



floor. The same is, however, controverted by the learned senior counsel for the respondent.

4. The disputes between the parties arose on account of the monetary entitlement asserted by the petitioner and as regards the quantum of work executed.

5. Learned counsel for the petitioner submits that after the disputes arose between the parties, the petitioner was denied access to the premises, even as the outstanding liability towards the petitioner remained undischarged. It is apprehended by the petitioner that the respondent may engage other agencies to execute the work, and change the nature of the site, which will prejudice the petitioner in arbitration proceedings, unless joint measurement is carried out. In the circumstances, the petitioner seeks that a Local Commissioner be appointed for inspection/taking measurement of the work done by the petitioner and preparation of inventory of the materials, records, tools, equipment, scaffolding material, etc., belonging to the petitioner that are lying at 19th and 20th Floor, Square Building's, Jacaranda Marg DLF City Phase 2 Gurugram (Haryana).

6. On 04.10.2024 with the consent of the parties, the parties were referred to the mediation. Pursuant thereto, a report has been furnished by the learned mediator, wherein it has been stated as under:-

“1. This Hon'ble Court vide order dated 04.10.2024, had appointed the undersigned as a Mediator. Pursuant to the same, the undersigned called for the parties to convene at the office of the undersigned at C-23, Gulmohar Park, New Delhi on 07.10.2024. The parties detailed their stand and after elaborate discussions between the parties in the presence and guidance of the mediator, the parties have reached an in-principle mutual agreement as detailed herein.

2. The Petitioner has pointed out that it has placed purchase



orders for materials of which material worth a certain amount which is yet to be ascertained is already at the site. The Petitioner will provide copies of the purchase order and proof of payment of the material at site / already ordered along with details of the advance paid. Upon receipt of the same, the Respondent will verify the material at site. This exercise will be done in the presence of the PMC. The representative of the Respondent Mr. Mayank Kulshreshtha will upon seeking instructions post verification reimburse the Petitioners the actual value of the good/materials lying at site and ordered upon payment of advance to vendors.

3. *The Respondent has pointed out that keys to various drawers on the 19th and 20th floor are yet to be handed over. According to the Petitioner, some of these keys may already be at the site and some may be available with their team / staff. The Petitioner will make all reasonable endeavour in good faith to handover the keys which are found/available to the Respondent at the earliest.*

4. *There is a dispute between both parties on the actual work done at the site (19th and 20th floors). This impasse can be resolved If the work done at the site is measured by independent neutral agency i.e., Coldwell Banker Richard Ellis (CBRE Group Inc.) and photographs are taken of the work already executed at the site. Accordingly, both parties can approach the court to seek appointment of an independent agency to carry out this exercise and submit a report to the Court.*

The Petitioner's point out that there are machines and tools and scaffolding at the site. The independent agency will make an assessment of the same and prepare a list of items along with photographs to be submitted to the Court along with its report.”

7. As recorded by the Mediator, the parties are in agreement that a neutral person be engaged to take measurement/inspect the work done by the petitioner at the site in question.

8. During the course of hearing, the parties have jointly submitted that any advocate be appointed as a Local Commissioner to carry out the task of inspecting and conducting the requisite measurement/verification of the work done. It is further agreed that the said Local Commissioner may also engage the services of a civil engineer or architect (as may be deemed



appropriate by the local commissioner) who will carry out the necessary inspection/measurement exercise. The parties also undertake to duly assist the Local Commissioner in the aforesaid exercise.

9. Accordingly, Mr. Ganesh Khemka, Advocate (Mob No.:9463441118) is appointed as the Local Commissioner. The fees of the Local Commissioner shall be Rs.2,00,000/-, in addition to the expenses that may incurred, including the expenses for engaging a civil engineer/architect. The same shall be shared by both the parties equally. The local commissioner shall also take photographs and conduct a videography, as may be deemed fit.

10. Let the Local Commissioner conclude the inspection/measurement exercise within a period of one week from today. Let the report of the local commissioner be placed on the record of these proceedings within a period of one week thereafter. Let a copy thereof be also provided to the parties, who shall be at liberty to refer to the same in the arbitration proceedings.

11. After the inspection is carried out, the petitioner shall remove his material including scaffolding material and construction material lying at the premises of the respondent. Also, the respondent shall be at liberty to engage other agencies for the purpose of carrying out the work in question and/or use the premises as per its requirements.

12. The respective counsel for the parties have also jointly requested that for the purpose of resolving/adjudicating the dispute between the parties, an Arbitrator may be appointed in these proceedings itself.

13. Accordingly, at joint request of the parties, Mr. Rahul Sharma, Advocate (Mob No.: 9810109329) is appointed as the Sole Arbitrator to adjudicate the disputes between the parties. It is further directed that prior to



adjudication of the disputes on merits, the learned Sole Arbitrator will endeavour to encourage the parties to arrive at an amicable resolution of the matter and for this purpose, the Arbitrator may use mediation, conciliation and/or other procedures, as permitted and contemplated under Section 30 of the A&C Act.

14. It is agreed between the parties that arbitration shall take place under the aegis of DIAC. It is directed accordingly.

15. Learned counsel for the petitioner submits that certain materials have been procured/purchased by it for deployment at the site in question. Some of these materials have already been deployed at the site in question and considerable material (for which firm orders have been placed) is in the process of being supplied. Learned counsel for the petitioner submits that it would be apposite if the respondent is directed to purchase the said material since the same has been paid for by the petitioner and the same would be anyway required by the respondent for the purpose of the site. Let the parties endeavour to arrive at a mutually acceptable arrangement in this regard, failing which this aspect shall be considered by the learned sole arbitrator.

16. The present petition is disposed of in the above terms.

SACHIN DATTA, J

OCTOBER 21, 2024/at