



2024:DHC:9274



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

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Date of Decision : 29.11.2024+ **ARB.P. 1612/2024, IA 46601/2024****BHARAT HEAVY ELECTRICALS LIMITED**

.....Petitioner

Through: Ms. Mani Gupta, Ms. Sonali Jain and
Ms. Garima Sharma, Advocates.

versus

M/S MAXFLOW PUMPS INDIA PVT. LTD.

.....Respondent

Through: Mr. Asit Tewari and Ms. Ishita
Kaushal, Advocates.**CORAM:****HON'BLE MR. JUSTICE SACHIN DATTA****SACHIN DATTA, J. (Oral)**

1. The present petition has been filed under section 11 of the Arbitration and Conciliation Act, 1996 (hereinafter referred as 'A&C Act') seeking appointment of a sole arbitrator to adjudicate the disputes between the parties.
2. The disputes stem from bids invited by the petitioner for a "Rate Contract" for supply of "*Misc. Pumps- Horizontal, mandatory spare parts and such other services*" for a period of two years. The respondent emerged as the successful bidder, and the parties entered into a contract bearing number PW/PE/PG/RTC/RC-12/17 dated 30.06.2017, which was subsequently amended via Amendment dated 07.11.2017. Pursuant to the said contract two Purchase Orders both dated 09.11.2017 were issued by the petitioner to the respondent for supply of Miscellaneous Pumps and mandatory spares for its Bhadradri Project in Telangana.
3. The relevant conditions of contract contain an arbitration clause as under: -



32.0 ARBITRATION

32.1 *In the event of any dispute or difference arising out of execution of order/ contract or the respective rights and liabilities of the parties or in relation to interpretation of any provision by Seller/ Contractor in any manner touching upon order/ contract, such dispute or difference shall (except as to any matters, the decision of which is specifically provided for therein) be referred to the arbitration of the person appointed by the competent authority of Purchaser.*

Subject as aforesaid, the provisions of Arbitration and Conciliation Act, 1996 (India) or statutory modifications or reenactments thereof and the rules made thereunder and for the time being in force shall apply to the arbitration proceedings under this clause. The venue of arbitration shall be at New Delhi.

32.2 *In case of Order/ Contract on Public Sector Enterprises (PSE) or a Govt. Deptt., the extant guidelines of Govt. of India shall be followed.*

32.3 *The cost of arbitration shall be borne equally by the parties."*

4. The disputes between the parties are stated to have arisen due to the respondent's failure to fulfil its contractual obligations in a timely and diligent manner, coupled with repeated defaults in honouring its commitments under the terms of the Contract.
5. The petitioner sent multiple emails to the respondent, repeatedly urging them to expedite the delivery. Despite these efforts, the respondent failed to fulfil its commitments under the contract. Consequently, the petitioner issued a letter on 25.09.2018, thereby requesting the respondent to meet the project deadline; it was stated that in the event of failure to do so, the petitioner would be compelled to take alternative action as per the provisions of the contract. However, the respondent never responded to the aforesaid letter.
6. Having received no positive response from the respondent, the Petitioner cancelled the outstanding purchase orders on 24.12.2018 and



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placed an order with another vendor on 02.01.2019 to meet urgent project requirements. A demand notice dated 28.01.2022 was subsequently issued to the respondent, seeking recovery of costs incurred.

7. On 02.02.2022, the petitioner issued a notice invoking arbitration and proposed three names for appointment as the sole Arbitrator. However, the respondent failed to respond or appoint an arbitrator.

8. In the above circumstances, the petitioner has approached this Court, through the present petition, seeking the appointment of a sole arbitrator to adjudicate the dispute/s.

9. Learned counsel for the respondent seeks to object to the appointment of an independent sole arbitrator to adjudicate the disputes between the parties on the ground that the claims in the present petition are time barred.

10. The aforesaid objection of learned counsel for the respondent does not constitute an impediment in constituting an arbitral tribunal to adjudicate the disputes between the parties. As held in *In Re: Interplay between Arbitration Agreement under the Arbitration and Conciliation Act, 1996 and the Indian Stamp Act, 1899* bearing the Curative Petition (C) No. 44/2023 decided on 14.12.2023, and *SBI General Insurance Co. Ltd. v. Krish Spinning, 2024 INSC 53*, the scope of inquiry in the present petition is confined to ascertaining the existence of the arbitration agreement.

11. Moreover, in terms of the judgment of the Supreme Court in *Perkins Eastman Architects DPC v. HSCC (India) Ltd* (2020) 20 SCC 760, *TRF Limited v. Energo Engineering Projects Ltd*, (2017) 8 SCC 377, *Bharat Broadband Network Limited v. United Telecoms Limited*, 2019 SCC OnLine SC 54, *Central Organisation for Railway Electrification Vs. ECI SPIC SMO MCML (JV) A Joint Venture Company*, MANU/SC/1190/2024



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it is incumbent on this Court to appoint an independent Sole Arbitrator to adjudicate the disputes between the parties.

12. The objection/s sought to be raised by learned counsel for the respondent as regards limitation and/or maintainability/arbitrability of the claims sought to be raised, shall necessarily be considered by the arbitrator in accordance with law.

13. Accordingly, Ms. Amrita Singh, Advocate (Mob. No.: +91 8860008286) is appointed as the Sole Arbitrator to adjudicate the disputes between the parties.

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

15. At request of respective counsel, it is directed that the arbitration shall take place under the aegis of and as per the Rules of the Delhi International Arbitration Centre (DIAC).

16. All rights and contentions of the parties in relation to the claims/counter claims are kept open, to be decided by the learned Sole Arbitrator on their merits, in accordance with law.

17. Needless to say, nothing in this order shall be construed as an expression of opinion of this court on the merits of the case.

18. The present petition stands disposed of in the above terms.

SACHIN DATTA, J

NOVEMBER 29, 2024/sv