



2024:DHC:9167



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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Date of Decision : 25.11.2024

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ARB.P. 1656/2024**HINDUSTAN COLAS PVT LTD****.....Petitioner****Through: Mr. T. Sundar Ramanathan, Ms.
Sukanya Viswanathan, Advs.****versus****DSC ENGINEERING PVT LTD****.....Respondent****Through: Mr. Vineet Goyal, Ms. Nishtha
Wadhwa, Advs.****CORAM:****HON'BLE MR. JUSTICE SACHIN DATTA****SACHIN DATTA, J. (Oral)**

1. The present petition under Section 11(6) of the Arbitration and Conciliation Act, 1996 (hereinafter '*the A&C Act*') seeks constitution of an Arbitral Tribunal to adjudicate the disputes between the parties.
2. The disputes between the parties have arisen in the context of the Work Order bearing W.O. NO. DEPL/WO/2020/10 dated 13.07.2020, Work Order bearing W.O. NO. DEPL/WO/20-2021/44 dated 22.01.2021, and Work Order bearing W.O. NO. DEPL/WO/2022/951 dated 26.02.2022, entered into between the parties (hereinafter '*the work order/s*').
3. Admittedly, the said work orders contain an arbitration clause which are identical in material aspect. The arbitration clause contained in the work order dated 13.07.2020 is as under:-

**“G-ARBITRATION CLAUSE**

In respect of disputes, differences, claims and questions amongst the Parties arising out of this Agreement or in any way relating to this document or any terms, condition or provision herein mentioned or construction or interpretation thereof, the Parties shall first endeavour to settle all such disputes, differences, claims or questions by friendly consultation and failing such settlement, the same shall be referred to arbitration, Breaches are to be notified to the other party with adequate time to remedy. Disputes may be referred to the respective MD/CEO of the Shareholders for amicable settlement. Any disputes, controversy or claims arising out of or relating to this Agreement or the breach thereof, shall be settled as per the Arbitration & Conciliation Act, 1996, as amended from time to time, by appointing a sole arbitrator as mutually agreed by the Parties. The arbitration proceedings to be held as per the said Arbitration & Conciliation Act, 1996 as amended from time to time.”

4. The arbitration clause contained in the work order/s dated 22.01.2021 and 26.02.2022 is as under:-

“G-Arbitration Clause

In respect of disputes, differences, claims and questions amongst the Parties arising out of this Agreement or in any way relating to this document or any term, condition or provision herein mentioned or construction or interpretation thereof, the Parties shall first endeavour to settle all such disputes, differences, claims or questions by friendly consultation and failing such settlement, the same shall be referred to arbitration, Breaches are to be notified to the other party with adequate time which shall not be less than 30 days to remedy. Disputes may be referred to the respective MD/CEO of the Companies for amicable settlement. Any disputes, controversy or claims arising out of or relating to this Agreement or the breach thereof, shall be settled as per the Arbitration & Conciliation Act, 1996 as amended from time to time, by appointing a sole arbitrator as mutually agreed by the Parties. The provisions of Arbitration and Conciliation Act, 1996 shall be applicable and arbitration proceedings to be held as per the said Arbitration & Conciliation Act, 1996 shall be applicable and arbitration proceedings to be held as per the said Arbitration & Conciliation Act, 1996 as amended from time to time.”

5. Disputes having arisen, a notice invoking arbitration dated 28.06.2024 was issued by the petitioner wherein the petitioner also proposed the name of a person who could be appointed as an arbitrator. A reply dated



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08.08.2024 was issued by the respondent, refuting the claims raised by the petitioner in the said invocation notice on their merits.

6. Since the parties could not mutually agree to the appointment of a Sole Arbitrator, the present petition has come to be filed.

7. Learned counsel for the respondent does not dispute the existence of the arbitration agreement under the said work order/s. He, however, strongly refutes the claims sought to be raised by the petitioner on merits. He further submits that the respondent may have to file certain counter-claims in the arbitral proceedings.

8. In terms of ***SBI General Insurance Co. Ltd. v. Krish Spinning*** 2024 SCC OnLine 1754, the scope of examination in proceedings under section 11 A&C Act is confined to ascertaining existence of the arbitration agreement. Since the existence of the arbitration agreement is *prima facie* evident from a perusal of the work order/s, there is no impediment to appointing an independent Sole Arbitrator to adjudicate the disputes between the parties.

9. Respective counsel for the parties also jointly request that an independent Sole Arbitrator be appointed to adjudicate the claims under the aforesaid work order/s. It is further requested that a technical person/engineer be appointed as the Sole Arbitrator.

10. Accordingly, as jointly prayed, Ms. Nandita Rao, Advocate (Mob. No.: +91 9999031918) is appointed as the Sole Arbitrator to adjudicate the disputes between the parties.

11. It is made clear that the reference to arbitration, under each work order, shall be independent. However, the Arbitrator shall be entitled to hold common hearings for the sake of convenience.



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12. The respondent shall be entitled to raise counter-claims and also to raise objections as regards jurisdiction/arbitrability of the claims sought to be raised by the claimant which shall be considered by the learned Sole Arbitrator on its own merits.

13. It is agreed by the parties that the arbitration shall take place under the aegis and rules of Delhi International and Arbitration Centre (DIAC). It is directed accordingly.

14. The petition is allowed in the above terms.

SACHIN DATTA, J

NOVEMBER 25, 2024/UK