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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Date of Decision: 19.11.2024

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ARB.P. 1754/2024**KANO HAR ELECTRICALS LIMITED**

.....Petitioner

Through: Mr. Raman Kapur, Sr. Adv. and Mr.
Varun Kapur, Adv.

versus

DELHI TRANSCO LIMITED

.....Respondent

Through: Ms. Chetna Rai, Adv.

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

1. The present petition filed under section 11(6) of the Arbitration and Conciliation Act, 1996 (hereinafter referred as '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 context of a Notification of Award (hereinafter referred as 'the NoA') dated 12.02.2019, for a supply contract of 'Power Transformer Package for the Supply, Erection, Testing and Commission of 02 nos. 160 MVA, for sub-stations of respondent at Narela and Sarita Vihar on turnkey basis.'

3. The applicable General Conditions of Contract (GCC) contains an arbitration clause as under: -

“6.2 Arbitration

6.2.1 If at any time any question, dispute or difference shall arise between the Employer and the



Contractor in connection with or arising out of the Contract or the carrying out of the Works either party shall be entitled to refer the matter to be finally settled by arbitration in accordance with the following provisions:

- 6.2.2 *The arbitration shall be conducted by three arbitrators. One each to be nominated by the Contractor and the Employer and the third to be appointed as an umpire by both the arbitrators in accordance with the Indian Arbitration Act. If either of the parties fails to appoint its arbitrator within sixty (60) days after receipt of a notice from the other party invoking the Arbitration clause, the arbitrator appointed by the party invoking the arbitration clause shall become the sole arbitrator to conduct the arbitration.*
- 6.2.3 *The arbitration shall be conducted in accordance with the provisions of the Indian Arbitration & Conciliation Act, 1996 or any statutory modification thereof. The venue of arbitration shall be New Delhi, India.*
- 6.2.4 *The arbitration shall be conducted at New Delhi, India. The language of arbitration shall be English.*
- 6.2.5 *The Arbitrator(s) shall have full power to open up review and revise:*
- (a) Any decision of the Employer referred to arbitration, and*
 - (b) Any certificate of the Employer related to the dispute.*
- 6.2.6 *The award given by the Arbitrator(s) under the Sub-clauses 6.2.1 & 6.2.3 shall be speaking award.”*



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4. The respondent *vide* letter dated 05.03.2019, changed the location of substations from Narela to Kanjhawala and from Sarita Vihar to Okhla for supply, erection, testing and commission of the transformers. Further *vide* letter dated 28.06.2019, again, the location from Okhla substation was changed to Vasant Kunj substation.
5. The stipulated period for completion of the work was 4 months followed by a period of 1 month for erection, testing and commission of the transformer at each site. Thus, the work was to be completed by 11.07.2019 i.e., within 5 months from the issuance of the NoA. However, admittedly, the work at Khanjhawala substation was completed by 13.09.2019 and at Vasant Kunj substation by 04.02.2020.
6. Pursuant to the completion of the work the petitioner issued a 'No Demand Certificate' dated 12.02.2019 (hereinafter referred as "*the NDC*") to the respondent for the release of the final pending payment.
7. The respondent *vide* a letter dated 04.10.2024 levied 5% of the total contract value as liquidated damages on account of delay in completion of the work.
8. The disputes between the parties have arisen allegedly on account of levy of liquidated damages by the respondent. It is alleged that the respondent neither resolved and reviewed the issue of delay in completion of work nor issued any prior notice regarding imposition of liquidated damages.
9. It is the case of the petitioner that delay in completion of work is attributable to the respondent's failure to fulfill its contractual obligations timely and that the change in location of substations impeded the execution of the contract work. It is also submitted that the NDC was issued by the



petitioner under duress, since the final payment, as per the “Due Drawn Sheet” was pending.

10. Disputes having arisen between the parties, a notice dated 02.11.2023 for invocation of arbitration was issued by the petitioner followed by a reminder letter dated 09.01.2024 for the aforesaid notice to the respondent.

11. *Vide* a reply dated 15.01.2024 the respondent communicated that the delay in completion of work was attributable to the petitioner and thereby no dispute exists between the parties for which the arbitration can be invoked.

12. 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.

13. Learned counsel on behalf of the respondent, while strongly refuting the merits of the claims sought to be raised by the petitioner, does not dispute the existence of the arbitration agreement. It is jointly requested by respective counsel that an independent sole arbitrator be appointed by this Court to adjudicate the disputes between the parties.

14. Accordingly, Mr. Gopal Singh, Advocate (Mob. No.: +91 9811156434) is appointed as the Sole Arbitrator to adjudicate the disputes between the parties.

15. The respondent shall be at liberty to raise preliminary objections as regards arbitrability/jurisdiction (if any) in respect of the claim/s sought to be raised, which shall be decided by the arbitrator, in accordance with law.

16. 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.

17. At joint request, it is directed that the arbitration shall take place



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under the aegis of and as per the rules of the Delhi International Arbitration Centre (DIAC).

18. 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.

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

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

SACHIN DATTA, J

NOVEMBER 19, 2024/sl