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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Date of Decision : 27.11.2024

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ARB.P. 1880/2024**M/S R B ENTERPRISES**

.....Petitioner

Through: Mr. Gaurav Aggarwal, Advocate (through VC) along with Mr. Abhishek Kumar, Ms. Mahima Misra, Mr. Naman Agarwal, Mr. Nitin Gupta, Mr. Rishabh Chaudhary, Mr. Vishnu and Mr. Arvind Misra, Advocates.

versus

UNION OF INDIA

.....Respondent

Through: Mr. Anshuman, SPC along with Mr. Rahul Kumar Sharma and Mr. Piyush, Advocates.

CORAM:**HON'BLE MR. JUSTICE SACHIN DATTA****SACHIN DATTA, J. (Oral)****IA No.46332/2024 (Exemption)**

1. Allowed, subject to all just exceptions.
2. The application stands disposed of.

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3. The present petition under Section 11(6) of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as 'the A&C Act') seeks constitution of an arbitral tribunal to adjudicate the disputes between the parties.
4. The disputes between the parties have arisen in the context of a Request for Proposal (hereinafter referred as 'RFP') bearing



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No.62501/Q/1/RFP/2017-18NeML(Pulses)/2017/APO issued on 01.08.2017, inviting online bids for supply of a cumulative 2929 MT of pluses to be delivered at various consignee depots of the respondent in specified quantities as contained in Appendix D to the

5. On 25.08.2017, the petitioner was awarded a contract/tender for procurement of 60 metric tons of Rajma by the respondent.

As per the terms of the contract, the petitioner furnished security deposit in the prescribed form. The contract in a prescribed manner also provided for a fixed delivery schedule for 60 metric tonnes of Rajma.

6. It is case of the petitioner that despite the entire supply being made by the petitioner in the manner prescribed in the contract, the respondent rejected the entire delivery of the same and *vide* termination letter dated 01.06.2018, cancelled the contract between the parties at the risk and costs of the petitioner.

7. Consequent to the wrongful termination of the contract, the bank guarantee furnished by the petitioner was also encashed.

8. Thereafter, the petitioner invoked arbitration pursuant to which the respondent unilaterally appointed a sole Arbitrator. The said Sole Arbitrator eventually terminated the proceedings on 28.08.2024. This was after the petitioner raised objection as to the unilateral appointment of the Sole Arbitrator contending that the same is *non est* in view of the position of law enunciated by the Supreme Court in *Perkins Eastman Architects DPC v. HSCC (INDIA) Limited*, (2020) 20 SCC 760, *TRF Limited v. Energo Engineering Projects Limited*, (2017) 8 SCC 377 and *Bharat Broadband Network Limited v. United Telecoms Limited*, (2019) 5 SCC 755.

9. Consequently, the present petition has come to be filed.



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10. Admittedly, the following arbitration clause contained in the Standard Conditions of RFP is applicable to the contract between the parties:-

*“3. **Arbitration.** All disputes or differences arising out of or in connection with the Contract shall be settled by bilateral discussions. Any dispute, disagreement or question arising out of or relating to the Contract or relating to construction or performance, which cannot be settled amicably, may be resolved through arbitration. The standard clause of arbitration is as per Forms DPM-7 and DPM-9 (Available on MoD website and can be provided on request).”*

11. Learned counsel for the respondent, on instructions, does not dispute the existence of the arbitration agreement.

12. Further, since the tender was issued in Delhi and the contract was executed from Delhi, it is undisputed that this Court has jurisdiction under Section 2(e) of the AC Act to entertain the present petition.

13. It is jointly requested that an independent sole Arbitrator be appointed by this court to adjudicate the disputes between the parties.

14. In view of the aforesaid and in view of the judgments of the Supreme Court in *Perkins Eastman Architects DPC v. HSCC (INDIA) Limited* (supra), *TRF Limited v. Energo Engineering Projects Limited* (supra) and *Bharat Broadband Network Limited v. United Telecoms Limited* (supra), *Central Organisation for Railway Electrification v. ECI-SPIC-SMO-MCML (JV)* 2024 SCC OnLine SC 3219, *Interplay between Arbitration Agreements under the Arbitration & Conciliation Act, 1996 & the Indian Stamp Act, 1899, In re*, 2023 SCC OnLine SC 1666 and *SBI General Insurance Co. Ltd. v. Krish Spinning* 2024 SCC OnLine SC 1754, there is no impediment to appointing an independent sole arbitrator to adjudicate the



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disputes between the parties.

15. Consequently, Ms. Ekta Kapil, Advocate (Mob.No. +91 9958097425) is appointed as the sole Arbitrator to adjudicate the disputes between the parties.

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. It is agreed by the parties that the arbitration shall be conducted under the aegis and as per the Rules of Delhi International Arbitration Centre (DIAC), and the payment of arbitrator's fee and arbitration cost, shall be governed by the said Rules. It is directed accordingly.

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 is allowed in the above terms.

SACHIN DATTA, J

NOVEMBER 27, 2024/r