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

+ O.M.P. (COMM) 359/2018

MRS SWAPNA BOSE(MRS SWAPNA SANJIB BOSE)

.....Petitioner

Through: Ms. Ruhini Dey, Mr. S. Ravishankar,
Mrs. Yamunah Nachiar, Advocates.

versus

M/S GOYAL MG GASES PRIVATE LIMITEDRespondent

Through: Mr. Tarun Singla and Mr. Parkash
Chand, Advocates along with Mr.
K.K. Dhar, AR

CORAM:

HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

ORDER

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18.12.2024

I.A. 48823/2024

1. This application under Order 23 Rule 3 CPC has been filed on behalf of the Respondent for bringing on record Settlement Deed dated 04.12.2024 and for disposal of present Petition being O.M.P. (COMM) 359/2018 in terms of the Settlement Deed dated 04.12.2024.
2. It is stated that the disputes have arisen between the parties under the Purchase Order dated 25.04.2014 bearing No.SRT1/14/1295-REV.02 for the purpose of designing, engineering, manufacturing, supplying, erection and commissioning of 50 MTPD CO₂ liquification plant. It is stated that the Arbitrator was unilaterally appointed by M/s Goyal MG Gases Private Limited and an Award dated 04.05.2018 was passed by the Ld. Arbitrator which has been challenged in the present petition by the Petitioner herein.
3. It is stated that during the pendency of the petition filed under Section



34 of the Arbitration and Conciliation Act, 1996, the parties have entered into a Settlement Agreement dated 04.12.2024. The same reads as under:-

“THIS DEED OF SETTLEMENT IS BEING ENTERED INTO ON THIS 04th DAY OF DECEMBER, 2024 BETWEEN:

M/S GOYAL MG GASES PVT. LTD. [HEREINAFTER GMGL] HAVING ITS REGISTERED OFFICE AT 53, FRIENDS COLONY (EAST), NEW DELHI- 110065, THROUGH ITS AUTHORISED REPRESENTATIVE MR. K. K. DHAR, WHO HAS BEEN DULY AUTHORIZED VIDE A BOARD RESOLUTION OF GMGL DATED 03.10.2024 FOR THIS PURPOSE BEING PARTY OF THE FIRST PART WHICH SHALL INCLUDE ALL SUCCESSORS & ASSIGNS OF GMGL.

AND

***BOSCO INDIA** [A SOLE PROPRIETORSHIP OF MS. SWAPNA BOSE W/O SANJIB BOSE R/O B-51, ARPAN COMPLEX, NIZAMPURA, VADODARA. GUJARAT-390008] BEING PARTY OF THE SECOND PART WHICH SHALL INCLUDE MS. SWAPNA BOSE SOLE PROPRIETOR OF BOSCO INDIA IN HER INDIVIDUAL CAPACITY AND HER SUCCESSORS LEGAL REPRESENTATIVES AND ASSIGNEES IF ANY.*

1. WHEREAS the Parties had entered into agreement, dated 24.05.2014 in the form of a purchase order No. SRT/I/14/1295-Rev-02s for designing, engineering, manufacturing, supply, erection & commissioning of complete 50 MTPD CO2 Plant at Hazira, Surat (Gujrat) and purchase thereof by GMGL from BOSCO INDIA [a sole proprietorship of Ms. Swapna Bose w/o Sanjib Bose r/o B-51, Arpan Complex, Nizampura, Vadodara, Gujarat-390008], for a total sale



consideration of Rs.1,63,00,000/- plus taxes, cumulatively amounting to Rs. 1,75,36,584/- (Rupees One Crore Seventy Five Lakhs Thirty Six Thousand Five Hundred and Eighty Four only).

2. AND WHEREAS disputes arose between the Parties, over the performance of the said CO2 Plant, which led to the institution of arbitral proceedings by GMGL., which culminated in the passing of an arbitral award dated 04.05.2018, under which BOSCO INDIA was required to take back the CO2 Plant and refund the purchase price of Rs.1,75,36,584/- to GMGL, less depreciation at the rate prescribed under the Companies Act, 2013, as on 04.05.2018. Further, the award also granted damages of Rs. 2,43,10,901/- upto 04.05.2018, in favour of GMGL, on account of losses suffered by GMGL, due to deficiency in the performance of the CO2 Plant and further damages at the rate of Rs.4,22,355/- per month from 01.01.2017 till the date of removal of the CO2 plant by Bosco India.

3. AND WHEREAS the said award dated 04.05.2018 is under challenge in the Hon'ble Delhi High Court, in OMP(COMM) No. 359/2018.

4. AND WHEREAS the Parties have, after detailed negotiation, agreed to enter into a Settlement, in the following terms:

A. That BOSCO INDIA has agreed to take back the 50 MTPD CO2 plant from GMGL, as per Annexure-1 attached herewith on as is where is basis, at a settlement price of Rs. 66,00,000/- (Rupees Sixty Six Lakhs only) plus 18% GST, cumulatively amount to Rs.77,88,000/-.

B. That upon prior payment of a sum of Rs. 26,40,000



/- [40% of agreed settlement price (excluding GST)], by BOSCO INDIA to GMGL, at the time of execution of this Settlement, BOSCO INDIA will commence the process of dismantling of the CO2 Plant, which stands installed in the premises of GMGL at Plot No. 669/1-2, Icchapore, GIDC, Kawas Patiya, Kawas - Ilazira Road, Surat, at the sole risk and cost of BOSCO INDIA.

C. That the said process of dismantling of the CO2 Plant shall be completed in all respects, by BOSCO INDIA, within 45 days of the execution of this settlement.

D. That upon completion of dismantling of the CO2 Plant and before the dispatch of the first piece of equipment of the said plant from the site of GMGL, BOSCO INDIA shall pay to GMGL the balance amount of the settlement price, being a sum of Rs. 51,48,000/- [inclusive total of GST].

E. That BOSCO INDIA has duly inspected the CO2 plant and shall not raise any dispute qua its condition, equipment or functionality.

F. That in the event BOSCO INDIA omits/fails/refuses to dismantle and remove the CO2 Plant from the premises of GMGL, upon payment of the balance sum of Rs. 51,48,000/- [inclusive of total GST], for any reason whatsoever, within a period of 45 days from the date of execution of this Settlement Deed, GMGL shall have the absolute right and liberty, to sell/dispose of/scrap the CO2 Plant and all its components, at its sole discretion, to whomsoever it thinks fit, and appropriate the proceeds thereof and further claim recovery of any deficient sum due to it under this settlement, from BOSCO INDIA, after adjusting the aforesaid sum of Rs.26,40,000/- [exclusive of GST].



This shall be without prejudice to any other remedy that GMGL may have for enforcement of the terms of this Settlement Deed or any other action that GMGL may take for violation of the undertaking referred to in para 7 hereinbelow.

G. Notwithstanding anything else contained in this Settlement Deed, the parties agree that this settlement shall, in no manner whatsoever, impact GMGL's claims of pecuniary damages, suffered by it on account of the deficient performance of the CO2 plant, from the date of the Purchase Order, dated 24.05.2014, till the CO2 Plant remains in the possession of GMGL.

H. That the Parties hereby consent to the setting aside of the award dated 04.05.2018 and further agree to request the Hon'ble Court seized of OMP (COMM) No. 359/2018, to appoint an arbitrator, with consent of parties, to decide GMGL's claim for damages, arising out of the performance of the CO2 Plant in the fresh arbitration Proceedings. The parties further agree to request the Hon'ble Court, that the fee of the proposed arbitrator be governed by Schedule IV of the Arbitration Act, 1996.

5. That as BOSCO INDIA is the sole proprietorship of Ms. Swapna Bose w/o Sanjib Bose R/o B-51, Arpan Complex, Nizampura, Vadodara, Gujarat-390008, all references to BOSCO in this Settlement Deed shall include within it, Ms. Swapna Bose, in her personal capacity, who shall be bound by the terms of this Settlement Deed.

6. The contents of this Settlement Deed are the sum total of the understanding arrived at by the Parties, in relation to the subject matter of this Settlement. All previous negotiations, communication, letters, emails, understandings, oral or otherwise, if any, in relation to



the subject matter of this Settlement shall stand superseded by the terms of this Settlement and will not be relied upon by the Parties.

7. The Parties shall undertake in Court to be bound by the terms of this Settlement Deed and request the Hon'ble Court to take the said undertaking on record.

8. The Parties will jointly request the Hon'ble Court to dispose of OMP (COMM) No. 359/2018, in terms of this Settlement Deed.

9. The terms of this Settlement shall not be amended or modified, except by an express agreement in writing which shall be titled as an addendum to this Settlement Deed."

4. A perusal of the paragraph No.4A of the Settlement Agreement dated 04.12.2024 indicates that M/s BOSCO India has agreed to take back the 50 MTPD CO₂ plant from M/s Goyal MG Gases Private Limited at a settlement price of Rs.66,00,000/- plus 18% GST, cumulatively amounting to Rs.77,88,000/-.

5. The Settlement Agreement dated 04.12.2024 also indicates that 40% of agreed settlement price (excluding GST) i.e. Rs.26,40,000/- has been paid by M/s BOSCO India to M/s Goyal MG Gases Private Limited and the balance amount of the settlement price, being a sum of Rs.51,48,000/- (inclusive total of GST) has to be paid in terms of the Settlement Agreement dated 04.12.2024 entered into between the parties.

6. The parties are bound by their respective commitments made under the Settlement Agreement dated 04.12.2024.

7. Since the Arbitrator was unilaterally appointed by M/s Goyal MG



Gases Private Limited as against the Judgment of the Apex Court in Perkins Eastman Architects DPC vs. HSCC (India) Ltd., 2019 SCC OnLine SC 1517, the parties have agreed that a new Arbitrator be appointed for deciding the other claims and the counter-claims of the parties as mentioned in paragraph No.4H of the Settlement Agreement dated 04.12.2024.

8. With the consent of the parties, the present Petition being O.M.P. (COMM) 359/2018 is disposed of in terms of the Settlement Agreement dated 04.12.2024 entered into between the parties.

9. This Court is inclined to appoint Mr. Nikhil Goel, Senior Advocate, (Mob. No. 9810133254) as the Arbitrator to adjudicate the disputes between the parties.

10. The arbitration would take place under the aegis of the Delhi International Arbitration Centre (DIAC) and would abide by its rules and regulations. The learned Arbitrator shall be entitled to fees as per the Schedule of Fees maintained by the DIAC.

11. The learned Arbitrator is also requested to file the requisite disclosure under Section 12(2) of the Arbitration & Conciliation Act within three weeks of entering on reference.

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

13. Needless to say, nothing in this order shall be construed as an expression of this Court on the merits of the contentions of the parties.

14. The present petition stands disposed of in the above terms along with pending application(s), if any.

15. The date already fixed i.e. 04.03.2025 stand cancelled.



16. The application is disposed of.

SUBRAMONIUM PRASAD, J

DECEMBER 18, 2024

RJ