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

\+ **ARB.P. 188/2025**

Date of Decision**: 20.03.2025**

IN THE MATTER OF:

RAILFAB TECHNOLOGIES PVT LTD .....Petitioner

Through: Mr.Shyam Sunder Gangwar, Advocate.

versus

UNION OF INDIA .....Respondent

Through: Mr.Mridul Jain, SPC with Mr.Chander Prakash, Office Superintendent.

HON'BLE MR. JUSTICE PURUSHAINDRA KUMAR KAURAV

JUDGEMENT

PURUSHAINDRA KUMAR KAURAV, J. (ORAL)

1. Heard learned counsel appearing on behalf of the parties.

2. The facts of the case would indicate that tender was floated for the supply of item namely "Set of Carline for Power Car 200 KMPH" in the year 2019, where the petitioner was one of the participants. On 14.08.2019, the work in question was awarded *vide* purchase order of supply of "Set of Carline for Power Car 200 KMPH".

3. The petitioner claims to have acted upon the purchase order and has

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undertaken various steps. On account of issuance of certain modification advise/ cancellation advise of certain quantity of purchase order etc., the petitioner requested the respondent to cancel the purchase order without any financial repercussion.

4. According to the petitioner, on account of all those reasons, the petitioner has suffered certain losses and a legal notice was sent. The petitioner, therefore, claims an amount of Rs.12,64,083/- including interest @ 18% per annum from the cancellation of goods i.e. 29.09.2021 till the realization of the same with pendent elite future interest etc.

5. In purchase order, Indian Railways Standard Conditions of Contract are being stated to be the integral part of the contract. Clause 2900 of the said document reads as under:-

> ***"2900. Arbitration.***
>
> *{a) In the event of any question, dispute or difference arising under these conditions or any special conditions of contract, or in connection with this contract (except as to any matters the decision of which is specially provided for by these or the special conditions) the same shall be referred to the sole arbitration of a Gazetted Railway Officer appointed to be the arbitrator, by the General Manager in the case of contracts entered into by the Zonal Railways and Production Units; by any Member of the Railway Board, in the case of contracts entered into by the Railway Board and by the Head of the Organisation in respect of contracts entered into by the other Organisations under the Ministry of Railways. The Gazetted Railway Officer to be appointed as arbitrator however will not be one of those who had an opportunity to deal with the matters to which the contract relates or who in the course of their duties as railway servant have expressed views on all or any of the matters under dispute or difference. The award of the arbitrator shall be final and binding on the parties to this contract.*
>
> *(b) In the event of the arbitrator dying, neglecting or refusing to act or resigning or being unable t o act for any reason, or his award being set*

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aside by the court for any reason, it shall be lawful for the authority appointing the arbitrator to appoint another arbitrator in place of the outgoing arbitrator in the manner aforesaid.

(c) It is further a term of this contract that no person other than the person appointed by the authority as aforesaid should act as arbitrator and that if for any reason that is not possible, the matter is not to be referred to 'arbitration at all.

(d) The arbitrator may from time-to-time with the consent of all the parties to the contract enlarge the time for making the award.

(e} Upon every and any such reference, the assessment of the cost incidental to the reference and award respectively shall be in the discretion of the arbitrator.

(f) Subject as aforesaid, the Arbitration Act, 1940 and the rules there under and any statutory modifications thereof for the time being in force shall be deemed to apply to the arbitration proceedings under this clause.

(g) The venue of arbitration shall be the place from which the acceptance note is issued or such other place as the arbitrator at his discretion may determine.

(h) In this clause the authority, to appoint the arbitrator includes, if there be no such authority, the officer who is for the time being discharging the functions of that authority, whether in addition to other functions or otherwise."

6. On notice being issued, learned counsel appearing on behalf of the respondent on instructions contends that subject to reserving all rights and contentions of the respondent, the Court may consider to appoint an Arbitrator.

7. It is evident that where there exists an arbitration clause and in the event any dispute arises between the parties, there should be no impediment in appointing an independent Sole Arbitrator for adjudicating the disputes

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between the parties. In this regard, reference can be made to the decisions of the Supreme Court in ***Perkins Eastman Architects DPC v. HSCC (India) Ltd.,***[1] ***TRF Limited v. Energo Engineering Projects Ltd.***,[2] ***Bharat Broadband Network Limited v. United Telecoms Limited.***,[3] and ***Interplay between Arbitration Agreements under the Arbitration & Conciliation Act, 1996 & the Indian Stamp Act, 1899, In re***[4]**.**

8. In view of aforesaid, the Court appoints Mr. Shivank Diddi, Advocate (Mob No.-+91 9958260000, Email-shivankdiddi.office@gmail.com) as the Sole Arbitrator to adjudicate the dispute between the parties.

9. The Sole Arbitrator may proceed with the arbitration proceedings, subject to furnishing to the parties, requisite disclosures as required under Section 12 of the Arbitration and Conciliation Act, 1996 (hereinafter referred as "*A&C Act*").

10. The Sole Arbitrator shall be entitled to fee in accordance with the IVth Schedule of the A&C Act; or as may otherwise be agreed to between the parties and the learned Sole Arbitrator.

11. The parties shall share the arbitrator's fee and arbitral cost, equally.

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

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[1] (2020) 20 SCC 760
[2] (2017) 8 SCC 377

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13. Needless to say, nothing in this order shall be construed as an expression of opinion of this Court on the merits of the controversy between the parties. All rights and contentions of the parties in this regard are reserved.

14. Let the copy of the said order be sent to the newly appointed Arbitrator through the electronic mode as well.

15. Accordingly, the instant petition stands disposed of.

PURUSHAINDRA KUMAR KAURAV, J

MARCH 20, 2025
Nc/@m

Click here to check corrigendum, if any

[3] 2019 SCC OnLine SC 547
[4] 2023 SCC OnLine SC 1666.

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