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IN THE HIGH COURT OF DELHI AT NEW DELHI

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ARB.P. 175/2024

M/S R B ENTERPRISES

..... Petitioner

Through: Mr. Gaurav Aggarwal, Ms. Mahima Misra, Mr. Rishabh Chaudhary, Mr. Nitin Gupta and Mr. Vishnu, Advocates.

versus

UNION OF INDIA & ORS.

..... Respondents

Through: Mr. Anshuman, SPC with Mr. Rahul Kumar Sharma, GP and Mr. Piyush Ahluwalia, Advocate for the respondents.

CORAM:

HON'BLE MR. JUSTICE ANUP JAIRAM BHAMBHANI

ORDER

03.04.2024

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By way of the present petition filed under section 11(6) read with section 43(4) of the Arbitration & Conciliation Act 1996, the petitioner seeks appointment of an arbitrator in relation to disputes that are stated to have arisen from Request for Proposal dated 13.06.2017 ('RFP').

2. Notice on this petition was issued on 07.02.2024.
3. No reply has been filed on behalf of the respondents.
4. The matter has a detailed history. The disputes that had arisen between the parties from the RFP were referred to arbitration in an earlier round. The learned Sole Arbitrator rendered arbitral award dated 14.12.2021. That award was challenged and *set-aside* by a Co-



ordinate Bench of this court *vide* judgement dated 18.12.2023 passed in O.M.P. (COMM.) No.115/2022 titled ***M/S R B Enterprises vs. Union of India.***

5. Mr. Gaurav Aggarwal, learned counsel appearing for the petitioner submits, that several disputes that have arisen between the parties from various Work Orders/Acceptances of Tender, are already pending in arbitration.
6. Counsel clarifies, that the disputes that are subject matter of the present petition arise from Acceptance of Tender dated 04.08.2017 bearing No. 62501/Q/1(34)/AT/2017-18/RICE (NeML)/2017/APO.
7. Issue notice.
8. Mr. Anshuman, learned Special Panel Counsel ('SPC') appears on behalf of the respondent on advance copy; accepts notice; and does not oppose the reference of the disputes to arbitration by appointing an arbitrator.
9. During the course of submissions, this court has noticed that clause 17 of the RFP comprises the arbitration agreement between the parties. Clause 3 of the Standard Clauses, that are part of the contract as per Form DPM-7 and DPM-9, also contain an arbitration clause. Furthermore, Form DPM-7 designates New Delhi as the 'seat' of arbitration. Though the arbitration agreement contemplates the appointment of a Sole Arbitrator by the respondent, that provision is in any case, *void* in view of the verdict of the Supreme Court in ***Perkins Eastman Architects DPC & Anr. vs. HSCC (India) Ltd.***¹.

¹ (2020) 20 SCC 760



10. It is also noticed, that though no (separate) invocation notice has been issued by the petitioner to the respondents prior to filing the present petition, considering that this is a second round of arbitration in respect of the same disputes, the first arbitral award have been set-aside by the court, the requirement of such notice is waived.
11. Upon a conspectus of the averments contained in the petition; the stand taken by the respondents; and the submissions made, this court is satisfied that there is a valid and subsisting arbitration agreement between the parties; and that this court has territorial jurisdiction to entertain and decide the present petition.
12. In view of the above, at this stage, learned counsel for the parties jointly request that this court may appoint an arbitrator; and then refer the matter for arbitration under the aegis of the Delhi International Arbitration Centre, New Delhi ('DIAC'), keeping all their respective factual and legal contentions open.
13. Accordingly, the present petition is allowed and **Mr. Achal Gupta, Advocate (Cellphone No.: +91 9811115569)** is appointed as the learned Sole Arbitrator to adjudicate upon the disputes between the parties; with arbitration proceedings to be conducted under the aegis of the DIAC, in accordance with applicable rules.
14. The learned Sole Arbitrator would furnish to the parties requisite disclosures as required under section 12 of the A&C Act; and in the event there is any impediment to the appointment on that count, the parties are given liberty to file an appropriate application in this court.



15. The learned Arbitrator shall then proceed with the arbitral proceedings in accordance with the rules and regulations of DIAC and subject to arbitrator's fee and arbitration costs, as may be applicable.
16. Parties shall share the arbitrator's fee and arbitral costs, equally.
17. 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.
18. Parties are directed to approach the learned Arbitrator appointed within 02 weeks.
19. A copy of this order be communicated *forthwith* to the Co-ordinator, DIAC, for information and compliance.
20. The petition stands disposed-of in the above terms.
21. Other pending applications, if any, also stand disposed-of.

ANUP JAIRAM BHAMBHANI, J

APRIL 3, 2024

V.Rawat

(Released on : 10th April 2024)