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

+ **ARB.P. 614/2025**

**M/S NEELKANTHAM SYSTEMS
PRIVATE LIMITED**

.....Petitioner

Through: Ms. Jyoti Chaturvedi and Mr.
Kaushik Mukherjee, Advocates.

versus

**M/S. ISGEC HEAVY ENGINEERING LIMITED
AND OTHERS**

.....Respondents

Through: Mr. Sahil Chopra and Mr. Yash
Tewari, Advocates.

**CORAM:
HON'BLE MS. JUSTICE JYOTI SINGH**

**ORDER
29.04.2025**

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1. This petition is preferred on behalf of the Petitioner under Section 11(6) of the Arbitration and Conciliation Act, 1996 ('1996 Act') seeking appointment of a Sole Arbitrator to adjudicate the disputes between the parties.
2. Facts to the extent necessary are that Respondents issued Letter of Intent dated 28.09.2021 in favour of the Petitioner, followed by Purchase Order dated 28.09.2021 in relation to civil and other related works at Jharsuguda at Odisha. The contract was for a period of one year and on 26.10.2021, Petitioner avers that it submitted an advance bank guarantee for mobilization of machinery etc. and manpower, equipment, machinery, vehicles etc. were deployed by the Petitioner, but the work was delayed on account of unavailability of RFC drawings and clear work front by the



Respondents.

3. It is the case of the Petitioner that Petitioner demanded Idling charges, pointing out the site condition and non-availability of work front but there was no response. On account of continuous breach of the terms of the contract by the Respondents, Petitioner suffered losses and claimed escalation of prices by 20%. On 16.08.2024, Respondents illegally terminated the contract but without compensation. Having no other option and disputes having arisen, Petitioner invoked Arbitration Clause 'S' in Annexure-IV 'General Terms and Conditions' in the Letter of Intent and sent notice dated 06.11.2024 appointing Shri Raj Kamal Singh, Advocate as nominee Arbitrator and requesting the Respondents to appoint their nominee Arbitrator. On 29.01.2025, Respondents appointed Shri O.P. Gupta, retired District and Sessions Judge as their nominee Arbitrator. However, on 03.03.2025, nominee Arbitrator of the Petitioner informed that mandate of nominee Arbitrators had expired after 30 days of appointment of nominee Arbitrator of the Respondents, Presiding Arbitrator could not be appointed. This led to the Petitioner filing the present petition.

4. Learned counsel for the Respondents, on instructions, submits that there is no dispute to the existence of the arbitration agreement, however, there is an objection to impleadment of Respondents No. 2 and 3 in the present petition as they have no role to play in the transaction in question and are merely employees of Respondent No. 1. This position is refuted by counsel for the Petitioner, who submits that Respondents No. 2 and 3 have a substantial role in the matter and are necessary parties for adjudication of the *inter se* disputes.

5. The Arbitration Clause 'S' in the Letter of Intent in question reads as



follows: -

“S. ARBITRATION

I. All disputes arising from, or in connection with the execution of the Contract, shall be settled amicably between the Parties. In case no settlement is reached, this Contract shall be governed by and construed in accordance with Indian Law without regard to conflicts of laws principles. Any dispute which cannot be settled amicably within a reasonable period shall be resolved by arbitration under the rules of conciliation and arbitration of the LICA. The venue shall be Delhi, India.

II. The Arbitral Tribunal shall consist of 3 arbitrators. Each Party shall nominate one arbitrator of his choice and such two nominated arbitrators shall agree upon the nomination of third arbitrator. Third arbitrator will act as the presiding arbitrator. The nomination of the arbitrators shall be within a reasonable time not later than 30 days of the receipt of the notice from any of the party, failing which non-breaching party has right to get the nomination of the arbitrator as per the provision of English Arbitration Act.

III. The English language shall be used through arbitral proceedings, and the award shall be final and binding upon the Parties.

IV. It is agreed between the parties that if the dispute between the parties is also a part of dispute between the Employer and the Owner, in such a situation all the disputes shall be tried together or the dispute between the party shall not be referred to arbitration unless the dispute between the Employer and the Owner is settled finally.

V. CISG is not applicable to this Contract.”

6. Accordingly, with the consent of the parties, Ms. Justice Deepa Sharma, former Judge of this Court (Mobile No. 9910384631) is appointed as the Sole Arbitrator to adjudicate the disputes between the parties. Arbitration proceedings will be held under the aegis of DIAC and as per its Rules. Fee of the Arbitrator shall be as per the DIAC (Administrative Cost and Arbitrators’ Fees) Rules, 2018.

7. Learned Arbitrator shall give disclosure under Section 12 of the 1996 Act before entering upon reference.

8. All rights and contentions of the parties are left open including the



objection raised by the Respondents to the impleadment of Respondents No. 2 and 3, which if taken will be decided by the learned Arbitrator.

9. It is made clear that this Court has not expressed any opinion on the merits of the case.

10. Petition is disposed of in the aforesaid terms.

JYOTI SINGH, J

APRIL 29, 2025/shivam