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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **ARB.P. 1768/2024**

Date of Decision: **20.03.2025****IN THE MATTER OF:****MS. TAYAL AGENCIES THROUGH ITS SOLE PROPRIETOR**

.....Petitioner

Through: Mr. Ankur Sood, Mr. Dhaman
Trivedi and Ms. Romila Mandal,
Advs.

versus

KENDRIYA BHANDAR

.....Respondent

Through: Mr. D. K. Nag and Mr. Fahad Imtiaz,
Advs.

HON'BLE MR. JUSTICE PURUSHAINDRA KUMAR KAURAV**JUDGEMENT****PURUSHAINDRA KUMAR KAURAV, J. (ORAL)**

1. The facts of the case would indicate that in the year 1997, the petitioner-proprietorship firm had filed an application for empanelment with the respondent as a supplier of various goods.
2. Thereafter, as per the petition, the petitioner-proprietorship firm continued to have business with the respondent and consequently, there have been various supplies and payments. It appears that in the year 2017, the father of the petitioner who was the sole proprietor then, expired and Mr Rajesh Kumar, being the son, entered into the shoes of his father. He, thereafter, became the sole proprietor of the firm.

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3. It is the case of the petitioner that even after the demise of his father in the year 2017, business continued with the respondent on the basis of the earlier empanelment. It is also stated that the respondent was to make the payment of a certain outstanding amount and on its failure, the petitioner issued a legal notice. According to the petitioner, despite the aforesaid, the payment has still not been made and therefore, the instant petition under Section 11 of the Arbitration and Conciliation Act, 1996 has been preferred. Mr. Ankur Sood, learned counsel for the petitioner further submitted that between 2015 and the date when instant cause had arisen, the dispute amid the same parties was subject to earlier arbitration proceedings.

4. The aforesaid contentions are vehemently opposed by Mr. D. K. Nag, learned counsel appearing for the respondent. He has various objections with respect to the claim of the petitioner.

5. While taking this Court through the reply filed by the respondent, Mr. Nag contends that the instant petition is not maintainable. He, primarily, contends that there is no valid contract or written agreement between the parties. Furthermore, he states that the respondent has not signed the terms and conditions of the supply as contented by the petitioner. Additionally, he submits that the earlier arbitration proceedings were on account of inadvertence.

6. The Court has considered the aforesaid submissions and finds that the objections raised by the respondent can be the subject matter of adjudication by the Arbitrator.

7. The fact remains that the petitioner is the sole proprietor of the partnership firm to which his father earlier was the sole proprietor. It is also



to be noted that after 2017 as well, certain correspondence has taken place between the parties and even arbitration proceedings were conducted. As to whether the same is on account of inadvertence or otherwise, shall be looked into by the Arbitrator.

8. A perusal of the petition indicates that the disputed amount of the instant petition is Rs. 14,93,500/- and Clause 15 of Terms and Conditions of Supply is essentially for the resolution of disputes by way of referring to Arbitration. The same is extracted below for ease of reference:

“(i) In the event of any question, dispute or different arising under these conditions or any special conditions of contract, or in connection which this contract (except as to any matters the decision of which is specially provided for by these or special conditions) the same shall be referred to the sole arbitrator of an officer in the Govt ./ Kendriya Bhandar appointed to be the arbitrator by the Managing Director, Kendriya Bhandar. It will be no objection that the arbitrator is a Govt, servant/ Kendriya Bhandar officer that he had to deal with the matter to which the contract relates or that in the course of the duties as a Govt , servant / Kendriya Bhandar officer.

(ii) In the event of the arbitrator dying, neglecting or refusing to act or resigning or being unable to act for any reason, or his award being set aside by the court for any reason, shall be lawful for the Managing Director, Kendriya Bhandar to appoint another arbitrator in place of the outgoing arbitrator in the manner aforesaid.

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

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

(v) Upon every and any such reference, the assessment of costs incidental to the reference and award respectively shall be in the discretion of the arbitrator.

(vi) Subject as aforesaid, the Arbitration Act, 1940 and the rules



thereunder and any statutory modification thereof the time being in force shall be deemed to apply to the Arbitration proceedings under this clause.

(vii) If the value of the claim in a reference exceeds Rs. 1 Lakh the arbitrator shall give reasoned award.

(viii) The venue of arbitration shall be the place from which the supply order is issued or such other place as the Managing Director, Kendriya Bhandar at his discretion may determine.

(ix) In this clause the expression “Managing Director, Kendriya Bhandar” means the Managing Director of Kendriya Bhandar for the time being and includes if there be no Managing Director, Kendriya Bhandar if he is on leave or is absent from duty or is not available for any reason whatsoever, the officer who is looking after current duties of Managing Director, Kendriya Bhandar whether in addition to other functions or otherwise.”

9. It is evident that where there exists an arbitration clause in the event any dispute has arisen between the parties, there should be no impediment in appointing an independent Sole Arbitrator for adjudicating the disputes between the parties as prayed for, as mandated in terms of the judgments 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.***

10. Leaving all the aforesaid questions and objections, raised or otherwise, open and reserving all rights and liberties in favour of the respective parties, the Court deems it appropriate to refer the matter for

¹ (2020) 20 SCC 760

² (2017) 8 SCC 377

³ 2019 SCC OnLine SC 547



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adjudication before the sole arbitrator and accordingly, the Court appoints Mr. Keshav Sehgal, Advocate (M. No. 9999989899, Email id- keshavsehgal.law@gmail.com) as the Sole Arbitrator to adjudicate the dispute between the parties.

11. 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”).

12. 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.

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

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

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

16. Accordingly, the instant petition stands disposed of.

PURUSHAINDRA KUMAR KAURAV, J
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Click here to check corrigendum, if any

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