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2024 SCC OnLine Del 9120

In the High Court of Delhi at New Delhi

(BEFORE SACHIN DATTA, J.)

ATC Foods Private Limited ... Petitioner;

Versus

Union of India and Others ... Respondents.

ARB.P. 1964/2024[§]

Decided on December 9, 2024

Advocates who appeared in this case :

Mr. Gaurav Aggarwal, Ms. Mahima Misra, Mr. Naman Agarwal, Mr. Abhishek Kumar, Mr. Nitin Gupta, Mr. Vishnu, Mr. Rishabh Chaudhary and Mr. Arvind Misra, Advs.

Mr. Jagdish Chandara, CGSC and Mr. Aishwarya Sinha, Advs. for UOI.

The Judgment of the Court was delivered by

SACHIN DATTA, J. (Oral):—

IA No. 47627/2024 (Exemption)

1. Allowed, subject to all just exceptions.

2. Application stands disposed of.

ARB.P. 1964/2024

3. The present petition under Section 11(6) r/w Section 43(4) of the Arbitration and Conciliation Act, 1996 (hereinafter 'the A&C Act') seeks constitution of an arbitral tribunal to adjudicate the disputes between the parties.

4. The disputes between the parties have arisen in the context of a tender floated by the respondents for supply of Sharbati Rice in specified quantities to various consignee depots of the respondents by a Request for Proposal dated 13.06.2017 (hereinafter 'RFP').

5. The petitioner participated in the said tender and a notice for acceptance of tender dated 28.07.2017 was issued in favour of the petitioner.

6. Disputes between the parties have arisen since the petitioner could not supply the specified quantities of Sharbati Rice or its equivalent for the reasons beyond the control of the petitioner. The contract was consequently terminated by the respondents.

7. A petition under Section 9 of the A&C Act was filed by the petitioner being OMP (I) (COMM.) 463/2017 seeking that the respondents be restrained from invoking the bank guarantees furnished by the petitioner. Certain interim orders came to be passed in the said

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petition.

8. Consequently, disputes continued to subsist between the parties on account of the fact that the respondents continued to retain the bank guarantees which were furnished by the petitioner.

9. Thereafter, a petition under Section 11 of the A&C Act came to be filed by the petitioner, pursuant to which, an arbitral tribunal was constituted to adjudicate the disputes between the parties. The said arbitral tribunal issued an arbitral award dated 01.12.2021, against which, a petition under Section 34 of the A&C Act was filed by the petitioner. The said petition came to be allowed by the learned District Judge, Commercial Court-1, Patiala House Courts, New Delhi on 26.10.2024.

10. Consequently, the present petition has been filed seeking adjudication of the pending disputes between the parties.

11. Learned counsel for the respondent, who appears on advance notice, does not dispute the existence of the arbitration clause.

12. Learned counsel for the respondents accedes to the prayer for appointment of an independent Sole Arbitrator by this Court to adjudicate the disputes between the parties.

13. Accordingly, Ms. Shreya Vedantika Mehra, Advocate (Mob. No. +91 9910027557) is appointed as the Sole Arbitrator to adjudicate the disputes between the parties.

14. Respondents shall be entitled to raise appropriate objections, if any, as regards arbitrability/jurisdiction before the learned Sole Arbitrator, which shall be duly considered and decided by the learned Sole Arbitrator in accordance with law.

15. The learned Sole Arbitrator may proceed with the arbitration proceedings subject to furnishing to the parties the requisite disclosure as required under Section 12 of the A&C Act.

16. At request of respective counsel, it is directed that the arbitration shall take place under the aegis of and as per the rules of the Delhi International Arbitration Centre (DIAC).

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

18. Needless to say, nothing in this order shall be construed as an expression of opinion of this court on the merits of the case.

19. The present petition stands disposed of in the above terms.

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§ 2024:DHC:9510

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