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

+ **ARB.P. 264/2024 & I.A. No. 4624/2024**

STERLITE TECHNOLOGIES LTD..... Petitioner

Through: Mr. Abhinav Mukerji, Sr. Adv. with
Ms. Pratishtha Vij & Mr. Raghav
Bhatia, Advs. (M: 9971919461)

versus

BHARAT SANCHAR NIGAM LIMITED Respondent

Through: Mr. Dinesh Agnani, Sr. Adv.
Alongwith Ms. Leena Tuteja and Ms.
Ishita Kadyan, Advs. (M:
9999505508)

CORAM:

JUSTICE PRATHIBA M. SINGH

ORDER

% **28.02.2024**

1. This hearing has been done through hybrid mode.

I.A.4624/2024 (for exemption)

2. This is an application seeking exemption from filing certified/cleared/typed or translated copies of documents, left side margins, electronic documents, etc. Original documents shall be produced/filed, if sought, strictly as per the provisions of the Delhi High Court (Original Side) Rules, 2018.

3. Exemption is allowed, subject to all just exceptions.

4. Accordingly, the application is disposed of.

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5. This is a petition on behalf of the Petitioner-Sterlite Technologies Limited under Section 11(6) of the Arbitration & Conciliation Act, 1996 (*hereinafter*, "Act") seeking appointment of a sole arbitrator in terms of

Clause 22 of the Purchase Order dated 15th October, 2018. (*hereinafter*, “*Purchase Order*”). Further, *vide* this petition, the Petitioner is seeking reference of further claims under the contract between the parties for arbitration.

6. It is the case of the Petitioner, that a tender was floated on 31st January, 2014 (*hereinafter*, “*tender*”) by the Respondent- Bharat Sanchar Nigam Limited. The said tender was awarded to the Petitioner vide Advance Purchase Order dated 23rd February, 2018. The work assigned to the Petitioner under the tender was to set up an advanced electronic infrastructure network for communication within the Indian Navy. The tender further required the Petitioner to supply equipment, testing, delivery, installation and commissioning, and also the construction of civil infrastructure at the site to house the equipment, etc.

7. It is averred in the petition that the Petitioner supplied all equipment under the said Purchase order by October 2019. However, it is the case of the Petitioner that there was a delay on part of the Respondent, which led to the project not being completed on time.

8. It is further claimed by the Petitioner that due to the delay caused by the Respondent, the Petitioner had to incur additional cost in providing the three years warranty from the date of actual commissioning. The Petitioner vide letter dated 13th March, 2023 to the Respondent, sought payment of the additional cost that it had incurred in form of additional warranty to the tune of approximately 230 crores.

9. It is submitted by Mr. Mukerji, Id. Sr. counsel appearing for the Petitioner that there is already an arbitration pending arising out of the same purchase order before the Sole Arbitrator who was appointed vide order

dated 23th January, 2024 by this Court in **ARB.P. 1081/2023**. Accordingly, in accordance with the decision in **Gammon India Ltd. & Anr. v. NHAI, 2020:DHC:2144**, wherein it was observed that multiple arbitrations before different Arbitral Tribunals in respect of the same contract is counter productive and ought to be avoided. The relevant portion of the said judgment is set out below:-

“44 (iii) In petitions seeking appointment of an Arbitrator/Constitution of an Arbitral Tribunal, parties ought to disclose if any Tribunal already stands constituted for adjudication of the claims of either party arising out of the same contract or the same series of contracts. If such a Tribunal has already been constituted, an endeavor can be made by the arbitral institution or the High Court under Section 11, to refer the matter to the same Tribunal or a single Tribunal in order to avoid conflicting and irreconcilable findings”

In view of the above decision, it is deemed appropriate to appoint **Dr. Justice S. Muralidhar (Retired) (M:9872727986)** as the sole Arbitrator even in this petition.

10. The arbitration shall take place under the aegis of the Delhi International Arbitration Centre ('DIAC'). The fee of the Arbitrator shall be paid in terms of the 4th Schedule as amended by DIAC Rules, 2023

11. Let a copy of the present order be emailed to Secretary, DIAC on email id- delhiarbitrationcentre@gmail.com.

12. The petition is disposed of. All pending applications are also disposed of.

PRATHIBA M. SINGH, J

FEBRUARY 28, 2024

dj/rks