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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Arb. P. No. 65/2015

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28th July, 2015

M/S SATPAL SHARMA & SONS

..... Petitioner

Through: Mr. R.Rajappa, Adv.

versus

UNION OF INDIA & ANR

..... Respondents

Through: Mr. Rajeev Sharma, Adv.

CORAM:

HON'BLE MR. JUSTICE VALMIKI J.MEHTA

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

1. This is a petition filed under Section 11(6) of the Arbitration and Conciliation Act, 1996 for appointing an Arbitrator to decide the disputes which have arisen between the parties under the Agreement dated 10.2.2010 for construction of Metro Staff Quarters at Kingsway Camp, Delhi, Phase-II.

2. On behalf of the respondents it is not disputed that there is an Arbitration Clause 25, however, it is stated that the arbitration clause has lapsed because the petitioner did not invoke the arbitration within 120 days

of receiving an intimation from the Engineer-in-Charge that the final bill is ready for payment.

3. The contention urged on behalf of the respondents is misconceived in view of an amendment brought about to Section 28 of the Indian Contract Act, 1872 and which specifies that any one party to a contract cannot destroy rights which the other party has, merely because those rights are not exercised within a specified period of time as stated under the contract. Section 28 of the Indian Contract Act was specifically amended by Amendment of the year 1997 and before which the legal position was that parties by agreement could have destroyed rights if not exercised in a particular period of time. Therefore, in view of the amended position of Section 28 of the Indian Contract Act, it is no longer possible for the respondents to contend that arbitration cannot be invoked merely because the same was not invoked within 120 days of receiving an intimation from the Engineer-in-Charge that the final bill is ready for payment.

4. Petitioner has given a notice for appointment of the Arbitrator to the respondents on 14.1.2014. Respondents did not appoint the Arbitrator and therefore in view of the judgment of the Supreme Court in the case of ***Deep Trading Company Vs. Indian Oil Corporation and Ors. (2013) 4 SCC 35***

respondent has lost the right to appoint an Arbitrator and this Court has to appoint an independent Arbitrator.

5. The contention of the counsel for the respondents that petitioner has not invoked the disputes redressal mechanism as specified in the agreement is also disputed on behalf of the petitioner, however, in view of the judgment in the case of ***Ravindra Kumar Verma Vs. BPTP Ltd. 2015 (147) DRJ 175***, it is ordered that before the effective commencement of arbitration, petitioner will take steps for enforcing the disputes redressal mechanism as specified in the contract, if not so already done.

6. Counsel for the parties state that since disputed amount is not large in this case, the matter be not referred to the Delhi High Court International Arbitration Centre and an independent Arbitrator be appointed.

7. Accordingly, I appoint Sh. P.K. Saxena, ADJ (Retd.), Mobile No.9910384668 as an Arbitrator to decide the disputes and differences between the parties which are the subject matter of the present petition. Arbitrator will be paid a lumpsum fee of Rs.1,10,000/- plus out of pocket expenses provided the parties ensure that the entire arbitration proceedings are concluded within 15 hearings. Costs of arbitration will be shared equally. 50% of the fee will be payable at the initial stage and balance 50%

will be payable on completion of evidence. With consent it is recorded that in case any of the parties seeks unnecessary adjournments, the Arbitrator will be entitled to impose costs on the party seeking unnecessary adjournments.

8. The petition is allowed and disposed of accordingly.

9. Parties to appear before the Arbitrator for further proceedings on 25th August, 2015 at 4.00 PM. Arbitrator will endeavour to complete the arbitration proceedings within one year of receipt of the copy of the present judgment.

JULY 28, 2015
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VALMIKI J. MEHTA, J.