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

+ ARB.P. 71/2012 & I.A. Nos.7306/2014, 5176/2016 and Crl.M.A.
18284/2014

M/S SUVIDHA ENGINEERS(PROJECT) Petitioner
Through Mr.Akhil Sachar, Adv. with
Mr.Raghu Vashisht, Adv.

versus

THE DY CHIEF ENGINEER(CONSTRUCTION) & ORS
..... Respondents
Through Ms.Geetanjali Mohan, Adv.

CORAM:

HON'BLE MR. JUSTICE MANMOHAN SINGH

ORDER

% **27.07.2016**

On the last date of hearing, the application filed by the intervener was dismissed by speaking order dated 23rd May, 2016. The petitioner is pressing the prayer in the petition.

Admittedly, the petitioner issued the notice dated 20th August, 2011 invoking the arbitration in terms of Clause 64(1)(i) of the GCC, 1999. The present petition was filed on 31st January, 2012. The objection of the learned counsel for the respondent is only that the notice was not properly served to the person concerned. At the same time, counsel for the respondent has also submitted that the notice issued by the petitioner dated 20th August, 2011 was processed with effect from 20th January, 2012 and ultimately on 5th February, 2012 panel of arbitrators were nominated and the petitioner was duly informed by means of letter dated 13th February, 2012

asking it to suggest the names of the arbitrators. It is not denied by the respondent that the names were suggested after filing of the present petition. The said issue has been discussed in the case of ***Datar Switchgears Ltd. v. Tata Finance Ltd. and another***, (2000) 8 SCC 151, paras 18 & 19 wherein it was held as under:-

“18. In the present case, the respondent made the appointment before the appellant filed the application under Section 11 but the said appointment was made beyond 30 days. Question is whether in a case falling under Section 11(6), the opposite party cannot appoint an arbitrator after the expiry of 30 days from the date of demand?

19. So far as cases falling under Section 11(6) are concerned — such as the one before us — no time limit has been prescribed under the Act, whereas a period of 30 days has been prescribed under Section 11(4) and Section 11(5) of the Act. In our view, therefore, *so far as Section 11(6) is concerned*, if one party demands the opposite party to appoint an arbitrator and the opposite party does not make an appointment within 30 days of the demand, the right to appointment does not get automatically forfeited after expiry of 30 days. If the opposite party makes an appointment even after 30 days of the demand, but *before the first party has moved the court under Section 11*, that would be sufficient. In other words, in cases arising under Section 11(6), if the opposite party has not made an appointment within 30 days of demand, the right to make appointment is not forfeited but continues, but an appointment has to be made before the former files application under Section 11 seeking appointment of an arbitrator. Only then the right of the opposite party ceases. We do not, therefore, agree with the observation in the above judgments that if the appointment is not made within 30 days of demand, the right to appoint an arbitrator under Section 11(6) is forfeited.”

It is settled law that in case the nominated Arbitrator is appointed, it is the duty of the party to inform rival party before filing of the petition. In the present case, it has not happened as admitted by the counsel for the respondent. Thus, the principles of ***Datar Switchgears Ltd.*** (supra) would prevail. Accordingly the petition is allowed. Justice V.K. Shali (Retired Judge of this Court) (Mob.No.9717495000) is appointed as sole Arbitrator to adjudicate the disputes arising out of the agreement in question between the parties. The parties are also allowed to file their respective claims and counter-claims before the Arbitrator.

The Arbitrator shall ensure the compliance of the provisions of Arbitration and Conciliation (Amendment) Ordinance, 2015 before commencing the arbitration. The fees of the learned Arbitrator shall be in terms of the amended Act. The proceedings be commenced after issuing the notice to both the parties. The parties to appear before the learned Arbitrator on 20th August, 2016 at 4.00 pm for directions.

Copy of this order be given *dasti* to the learned counsel for the parties and a copy thereof be communicated to the learned Arbitrator by the Registry forthwith.

MANMOHAN SINGH, J.

JULY 27, 2016/jk