

\$~3

*

IN THE HIGH COURT OF DELHI AT NEW DELHI

+

ARB.P. 101/2016

PES INSTALLATIONS PVT. LTD. Petitioner

Through: Mr.Manish Bhasin, Adv.

versus

MARG LIMITED Respondent

**Through: Mr.Jayant K.Mehta, Mr.S.D.Karan
Singh, Ms.Madhavi Khare, Advs.**

CORAM:

HON'BLE MR. JUSTICE V. KAMESWAR RAO

ORDER

%

04.05.2016

1. This is a petition under Section 11 of the Arbitration and Conciliation Act seeking appointment of a sole Arbitrator. The Arbitration clause reads as under:-

“RESOLUTION OF DISPUTES:

In the event any dispute arises in connection with this Work Order, the parties shall attempt first disputes through mutual negotiation. If the dispute is not resolved in this manner within 30 days after the date on which one party has issued written notice to the other party for the commencement of negotiation, then either party may refer the dispute to the Sole Arbitration of Sh. Mukesh Kumar Gupta, Executive Director, MRG Limited, 3rd Floor, 6, Pusa Road, New Delhi-110005 or any other person as may be nominated by him. The proceedings shall be governed by the Arbitration & Conciliation Act, 1996 and the place of arbitration proceedings at New Delhi. The award in the arbitration is final and binding on the Parties.”

2. Learned counsel for the respondent states that there is no cause for the petitioner to approach this Court by way of this petition. He states that “he should have approached Mr.Mukesh Kumar Gupta, the named Arbitrator to enter the reference or to appoint an Arbitrator in his place for adjudication of the disputes.

3. On the other hand, it is the submission of the learned counsel for the petitioner that vide letter dated 28th September, 2015, the petitioner had invoked the arbitration clause whereby he called upon the respondent to refer the matter to Mr.Mukesh Kumar Gupta, Ex. Director of the respondent organisation (the named arbitrator) to settle the disputes.

4. It appears that there was no response to this letter. It is the contention of the learned counsel for the petitioner that the petition has been filed on 5th February, 2016, subsequent thereto on 16th February, 2016, Mr.Mukesh Kumar Gupta had appointed Mr.Deepak Kapoor as the sole arbitrator, which is impermissible as, on failure to enter reference he has forfeited the right to appoint an Arbitrator. He relies on the decision of this Court in arbitration petition no.24/2016 decided on 26th February, 2016.

5. After making some submissions, learned counsel for the respondent request the Court to adjourn the matter to enable him to take instructions.

Such a request is not acceded to.

6. Noting the fact that the petitioner had called upon the respondent to request Mr.Mukesh Kumar Gupta to settle dispute and the fact that there was no response to such a request till filing of the petition, the appointment of Mr.Deepak Kapoor, is not sustainable in law. This Court accordingly appoints Mr.S.M.Chopra, retired ADJ who is on the panel of Delhi International Arbitration Centre (DAC) as the sole Arbitrator who would adjudicate the disputes in accordance with the rules and regulations made by the DAC. Let a copy of this order be sent to the Co-ordinator, DAC.

7. The petition is disposed of.

V. KAMESWAR RAO, J

MAY 04, 2016

RN