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

+ ARB.P. 188/2016

PRADEEP VINOD CONSTRUCTION CO Petitioner
Through Mr.S.W.Haider, Adv.

versus

UNION OF INDIA Respondent
Through Mr.Jagjit Singh, Adv. with Mr.Preet
Singh, Adv.

CORAM:
HON'BLE MR. JUSTICE MANMOHAN SINGH

ORDER
% **02.06.2016**

Reply has not yet been filed. Learned counsel for the petitioner is insisting for hearing of the petition. Learned counsel for the respondent states that proper procedure has not been followed, although he has admitted that before filing of the petition despite of receiving the invocation notice, the Arbitrator was not nominated by the respondent.

As far as his second submission is concerned, it is settled law that there would be a failure of procedure necessitating recourse to Section 11(6) of the Act when a party, that is bound to take steps to appoint the Arbitrator, refuses to perform its obligation as such. The Supreme Court in ***Datar Switchgears Ltd. v. Tata Finance Ltd. and Another***, (2000) 8 SCC 151, has enunciated the law in this regard in the following words:

"An application under sub-clause (6) of Section 11 can be filed when there is a failure of the procedure for appointment

of Arbitrator. This failure of procedure can arise under different circumstances. It can be a case where a party who is bound to appoint an Arbitrator refuses to appoint the Arbitrator or where two appointed Arbitrators fail to appoint the third Arbitrator. If the appointment of Arbitrator or any function connected with such appointment is entrusted to any person or institution and such person or institution fails to discharge such function, the aggrieved party can approach the Chief Justice for appointment of Arbitrator."

In view of the decision of ***Datar Switchgears Ltd.*** (supra), the respondent has lost its right, as the notice of invocation of arbitration was issued by the petitioner on 30th March, 2016. Despite of notice, till the date of filing of the petition, the Arbitrator was not appointed. Under these circumstances, this Court is left with no option but to appoint the sole Arbitrator to adjudicate the disputes between the parties

As regards the objection of the respondent that the proper procedure has not been followed, the learned counsel for the petitioner states that after completion of the work on 31st December, 2014, the petitioner kept on reminding the respondents about the final bills personally as well as through its letters dated 12th February, 2015 and 4th April, 2015, however, the respondent was not ready to pay the due amount. Thus, the procedure has been followed. Even otherwise, in view of the two recent judgments rendered by co-ordinate Bench in the case of ***M/s. Satpal Sharma & Sons vs. Union of India & Anr.***, being Arb. P. No.65/2015, dated 28th July, 2015 and ***Ravindra Kumar Verma vs. M/s. BPTP Ltd. & Anr.***, C.M. (M) No.1021/2014, dated 18th November, 2014, the said objection obviously has no force.

Accordingly, Justice J.P. Singh, (Retd.) (Mobile No. 9810053190/28745905) is appointed as sole Arbitrator to adjudicate the disputes arising between the parties as mentioned in the present petition. The parties are also allowed to file their respective claims and counter-claims before the Arbitrator.

The arbitration shall take place under the aegis of Delhi International Arbitration Centre ('DAC'). The Arbitrator shall ensure the compliance of the provisions of Arbitration and Conciliation (Amendment) Act, 2015 before commencing the arbitration. The fees of the learned Arbitrator shall be in terms of the schedule of the amended Act. The parties to appear before the Arbitrator on 29th July, 2016 at 5.00 pm for directions.

The petition is accordingly disposed of.

Copy of this order be given *dasti* to the learned counsel for the parties and a copy thereof be delivered to the learned Arbitrator as well as Additional Coordinator, DAC forthwith.

MANMOHAN SINGH, J.

JUNE 02, 2016/vp