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

+ **ARB.P. 318/2016**

N.S. ASSOCIATES PVT. LTD.

..... Petitioner

Through: Mr M. Tarique Siddiqui and Mr
Tanveer Ahmed, Advocates.

versus

UMANG REALTECH (P) LTD.

..... Respondent

Through: Mr Rahul Malhotra, Advocate.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER

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27.10.2016

1. The petitioner has filed the present petition under Section 11 of the Arbitration and Conciliation Act, *inter alia*, praying that an Arbitrator be appointed to resolve the disputes that have arisen between the parties in relation to an agreement dated 30.01.2014. It is stated that the respondent had issued a Letter of Intent (LOI) dated 14.11.2013 indicating its intent to award the contract for execution of the works described as under:-

“Balance Structure & Finishing work of Towers [excluding finishing work of Tower T3 (C, D, & E), Landscape work (excluding the softscape), Structure and finishing work of EWS (G+12) including Provisional work (Partly) under Part-I & Part II at project "Winter Hill" Near Dwarka Mor Metro Station, New Delhi.”

2. Thereafter, the parties entered into a contract dated 30.01.2014. The General Conditions of the Contract included an arbitration clause, which is set out below:-

**“52. SETTLEMENT OF DISPUTES/
ARBITRATION:**

52.1 Except where otherwise provided for in the contract all questions and disputes relating to the meaning of the specifications, designs, drawings and instructions herein before mentioned and as to the quality of workmanship or materials used on the work or as to any other question, claim right matter or thing whatsoever in any way arising out or relating to contract, designs, drawing, specifications, estimates instructions, order or these conditions or otherwise concerning the works or execution or failure to execute the same whether arising the progress of the work or after the completion or abandonment thereof shall be referred to the sole arbitration of CEO/Head Projects of the Owner or any other person appointed by him. There will be no objection if the arbitrator so appointed is an employee or Owner and that he had to deal with the matter which the contract relates and that in the course of his duties as such he had expressed views on all or any of the matters in disputes or differences.

52.2 The arbitrator to whom the matter is originally referred being transferred or vacating this office or being unable to act for any reason the CEO/Head Projects shall appoint another person to act as arbitrator in accordance with the terms of the contract. Such person shall be entitled to proceed with the reference from the stage at which it was left by his predecessor. It is also a term of this contract that a person other than a person

appointed by the CEO / Head Projects, as aforesaid should act as Arbitrator and if for any reason that is not possible the matter is not to be referred to arbitration at all, in all cases where the amount of the claim dispute is Rs.50,000 (Rupees Fifty thousand) and above, the Arbitrator shall give reasons for the award.

52.3 Subject as aforesaid the provision of the arbitration Act, 1940, or any statutory modification or re-enactment thereof and the rules made there under and for the time being in force shall apply to the arbitration proceeding under this clause.

It is a term of the contract that the party invoking arbitration shall specify the dispute or disputes to be referred to.

Arbitration under this clause together with the amount or amounts claimed in respect of each such dispute.

The Arbitrator (s) may from time to time consent of the parties enlarge the time for making and publishing the award. The work under the contract shall, if reasonably possible, continue during the arbitration proceedings and no payment due or payable to the contractor shall be withheld on account of such proceedings. The Arbitrator shall be deemed to have entered on the reference on the date he issues notice to both the parties fixing the date of the first hearing. The Arbitrator shall give a separate award in respect of each dispute or difference referred to him.

The venue of arbitration shall be New Delhi. The award of the Arbitrator shall be final, conclusive and binding on all parties to this contract.”

3. In view of the disputes that had arisen between the parties, the petitioner invoked the said arbitration clause by a letter dated 12.03.2016. Admittedly, an Arbitrator in terms of the said clause has not been appointed. In the circumstances, the petitioner was constrained to file the present petition.

4. The learned counsel appearing for the respondent does not dispute the existence of the arbitration clause. He, however, submits that there are no disputes between the parties as the respondent can only process a final bill after the conditions for the same have been met. This is countered by the learned counsel for the petitioner.

5. At this stage, it is not necessary to examine the merits of the controversy between the parties. Since the existence of the arbitration agreement is not disputed and the Arbitrator has not been appointed pursuant to the request made by the petitioner, an Arbitrator is required to be appointed.

6. At this stage, the learned counsel for the parties state that the parties would be willing to appoint an Arbitrator under the Rules of the Delhi International Arbitration Centre (DIAC).

7. Accordingly, it is directed that an Arbitrator be appointed under the Rules of the DIAC. The representatives of the parties shall appear before the Co-ordinator, DIAC on 18.11.2016 at 11:00 AM. The arbitration shall be conducted under the aegis of DIAC and in accordance with its Rules.

8. The petition is disposed of.

OCTOBER 27, 2016
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VIBHU BAKHRU, J