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

+ **ARB.P. 487/2016**

ACRO TECH INFRASTRUCTURE PVT.
LTD.

..... Petitioner

Through Mr Shalabh Singhal, Advocate.

versus

M/S RUDRA BUILDWELL PROJECTS PVT.
LTD.

..... Respondent

Through

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER

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30.11.2016

1. The petitioner has filed the present petition under Section 11 (6) of the Arbitration and Conciliation Act, 1996 (hereafter 'the Act'), *inter alia*, praying that an arbitrator be appointed to adjudicate the disputes that have arisen between the parties in relation to the Work Order dated 01.05.2015 issued by the respondent.
2. The said work order includes an arbitration clause, which is set out below:-

“25. SETTLEMENT OF DISPUTES AND ARBITRATION: Any and all disputes arising with respect to any of the terms and conditions of this contract shall be settled amicably by the Parties through mutual discussions. In case of failure of the Parties to resolve any such disputes, the same shall be referred to the arbitration under the provisions of the Arbitration and Conciliation Act, 1996 as amended from time to time. The Contractor agrees that the sole arbitrator to decide any such dispute shall be appointed by the Managing Director of the Company. The place of arbitration

proceedings shall be at New Delhi and the language of proceedings shall be English. The decision of the Arbitrator shall be final and binding on the Parties. ”

3. The petitioner had invoked the arbitration clause by a letter dated 13.06.2016.

4. The learned counsel appearing for the respondent does not dispute the existence of the arbitration clause. He, however, submits that after the present petition was filed, the respondent has proceeded to appoint a sole arbitrator by its letter dated 17.11.2016. The learned counsel appearing for the petitioner states, on instructions, that the petitioner has received no such communication regarding appointment of an arbitrator. He further submits that since the respondent had not appointed the arbitrator prior to the petitioner filing the present petition, it had forfeited its right to do so.

5. It is not disputed that the arbitrator was not appointed prior to the petitioner approaching this Court. In **Datar Switchgear Ltd v. Tata Finance Ltd and Anr.:** (2000) 8 SCC 151, the Supreme Court had explained that although there is no time specified under Section 11 (6) of the Act for appointment of an arbitrator, the party would forfeit its right to appoint an arbitrator if it does not do so prior to the filing of a petition under section 11 of the Act. The relevant extract of the said decision reads 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.”

6. In view of the aforesaid, it is necessary that an arbitrator be appointed by this Court. Accordingly, with the consent of parties, it is directed that an Arbitrator be appointed under the Rules of the Delhi International Arbitration Centre (DIAC). The representatives of the parties shall appear before the Co-ordinator, DIAC on 21.12.2016 at 11:00 AM. The arbitration shall be conducted under the aegis of DIAC and in accordance with its Rules.

7. The petition is disposed of.

VIBHU BAKHRU, J

NOVEMBER 30, 2016/pkv