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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **ARB.P. 592/2016**

SECL INDUSTRIES PVT. LIMITED Petitioner

Through: Ms Roopali Chaturvedi, Ms Anmol
Kataruka and Mr Jitendra Kumar,
Advocates.

Versus

IRCON INTERNATIONAL LIMITED Respondent

Through: Mr K. R. Gupta, Advocate.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER

% **23.11.2016**

1. The petitioner has filed the present petition under Section 11 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 a contract dated 11.08.2011.
2. The existence of the arbitration clause is not disputed. However, the learned counsel for the respondent states that the petitioner has not exhausted the remedy of attempting to resolve the disputes by mediation/conciliation.
3. Ms Chaturvedi, the learned counsel for the petitioner stoutly disputes the aforesaid contention. She has referred to various letters as well as to the Minutes of Meeting held on 25.08.2015, which indicates that the parties had attempted to resolve their disputes amicably.
4. Further, in an order passed by this Court on 13.01.2015 in OMP No.10/2015 (*SECL Industries Pvt. Ltd v. IRCON International Limited & Ors.*), the Court had specifically directed that the bank guarantee in question

would be renewed till such time as the Managing Director takes a decision on the representation made by the petitioner in terms of Clause 73.13 of the agreement. This order also indicates that the Managing Director of the respondent was required to resolve the issues.

5. In view of the aforesaid, the contention that the petitioner has not exhausted the first step of trying to resolve the disputes amicably cannot be readily accepted. However, in view of the contention that the Managing Director of the respondent has not got the opportunity to resolve the disputes amicably, it is directed that the letter dated 08.07.2016 along with all the averments made in the petition as well as the documents annexed hereto be considered as a representation of the petitioner by the Managing Director of the respondent. The same shall be considered as a formal reference to the Managing Director for mediation/conciliation. The Managing Director of the respondent shall take a decision within a period of 60 days from today.

6. If the disputes as referred to by the petitioner in the letter dated 08.07.2016 are not resolved to the satisfaction of the petitioner then an arbitrator shall be appointed (without further notice) to adjudicate the disputes in accordance with the arbitration clause. In the event, the arbitrator is not appointed within a period of 30 days after expiry of the period of 60 days from today, the petitioner is at liberty to approach this Court for appointment of an arbitrator.

7. The petition is disposed of with the aforesaid directions.

VIBHU BAKHRU, J

NOVEMBER 23, 2016/MK