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

+ **ARB.P. 587/2016**

SAHIL CHOPRA

..... Petitioner

Through : Mr Rohit Jain, Advocate.

versus

SOUTH DELHI MUNICIPAL
CORPORATION(SDMC)

..... Respondent

Through : Mr Biji Rajesh and Mr Gaurang Kanth,
Advocates.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER

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19.10.2016

1. The petitioner has filed the present petition under Section 11 (6) of the Arbitration and Conciliation Act, 1996, *inter alia*, praying that an Arbitrator be appointed for adjudication of the disputes that have arisen between the parties in relation to an agreement dated 07.07.2010.
2. The respondent (SDMC) had invited a tenders on 09.06.2010, *inter alia*, for awarding contracts for maintenance/upkeep of the subways near CGO complex, Cremation Ground, Lal Bahadur Shastri Marg (Central Zone), New Delhi. In terms of the Notice Inviting Tender (NIT) the successful bidder would also have the advertisement rights in lieu of the contract for maintenance/upkeep.
3. The petitioner's offer was accepted and an agreement dated 07.07.2010 was also executed between the parties and the terms of the NIT were incorporated as part of the agreement. The NIT contained an

arbitration clause which is set out below:-

“30. (a) In the event of any controversy or dispute arising out of this contract the same shall be returned to the sole arbitration of the Commissioner or any officer nominated by him, in this behalf. There shall be no bar on reference of dispute to the arbitrator or such an officer so nominated by the Commissioner, even though the said officer is an employee of the MCD or might have dealt with the matter earlier or expressed his opinion thereon. In case the arbitrator to whom the matter is originally referred is transferred or vacates his office or is unable to act for any reason whatsoever, the Commissioner, MCD shall be competent to appoint another person as arbitrator who shall be entitled to proceed with the reference from the stage at which it was left by his predecessor. The decision of the Arbitrator appointed by the Commissioner, shall be final and binding on the parties. The limitation for filing the claim for arbitration is 90 days from the expiry of the contract period and in case no claim is filed within this period, it shall be presumed that there is no claim.

(b) Subject to above, the provisions of the Arbitration Act, 1940 or any statutory modifications or enactment thereof and the rules made thereunder and for the time being in force, shall apply to the arbitration proceedings under this clause.

(c) The party invoking the arbitration clause shall specify the disputes to be referred to arbitration under this clause together with the amount or amounts claimed in respect of each of such disputes/claims.

(d) The arbitrator may, from time to time, without the consent of the parties, enlarge the time for making and publishing the Award. ”

4. The petitioner states that certain disputes have arisen between the parties in relation to the aforesaid contract and accordingly the petitioner issued a notice dated 04.06.2016 invoking the arbitration clause.

5. The learned counsel appearing for the respondent does not dispute the existence of the arbitration agreement (arbitration clause). She, however, submits that the respondent may be given an opportunity to appoint an Arbitrator.

6. In view of the fact that in terms of the decision of the Supreme Court in *Datar Switchgear Ltd v. Tata Finance Ltd : (2000) 8 SCC 151* the respondent has forfeited its right to appoint an Arbitrator and therefore an arbitrator is required to be appointed by this Court.

7. Accordingly, 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 03.11.2016 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.

VIBHU BAKHRU, J

OCTOBER 19, 2016

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