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

+ **ARB.P. 687/2016**

VARUN GUPTA

..... Petitioner

Through: Mr Surinder Goel & Mr Shivam Goel,
Advs.

versus

IRRIGATION & FLOOD CONTROL

DEPARTMENT & ORS.

..... Respondents

Through: Mr Sanjay Dewan & Ms Palak, Advs.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER

% **04.11.2016**

IA No.13630/2016

1. Allowed, subject to all just exceptions.
2. The application is disposed of.

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3. The petitioner has filed the petition under Section 11 of the Arbitration and Conciliation Act, 1996 (hereafter 'the Act'), *inter alia*, praying that an Arbitrator be appointed.
4. The respondent No.1 had invited tenders for construction of the double story *Barat Ghar* at village Chiraga Suman, Usmanpur, Delhi by a notice inviting tender on 26.09.2011. The petitioner participated in the aforesaid tender and his bid was accepted. It is stated that pursuant to the intimation of the acceptance on 13.12.2011, the petitioner also submitted the performance bank guarantee to the tune of ₹ 9,00,441/- which was duly accepted by the respondents.
5. The petitioner states that as certain disputes had arisen in relation to the contract, the petitioner invoked the arbitration clause

on 22.12.2015.

6. The relevant arbitration clause is reproduced below:-

"(ii) Except where the decision has become final, binding and conclusive in terms of Sub Para (i) above, disputes or difference shall be referred for adjudication through arbitration by a sole arbitrator appointed by the Chief Engineer, I&FC Department, in charge of the work or if there be no Chief Engineer, the Additional Director General of the concerned region of I&FC, or if there be no Additional Director General, Director General of Works, I&FC. If the arbitrator so appointed is unable or unwilling to act or resign his appointment or vacates his office due to any reason whatsoever, another sole arbitrator shall be appointed in the manner aforesaid. Such person shall be entitled to proceed with the reference from the stage at which it was left by his predecessor.

It is a term of this contract that the party invoking arbitration shall give a list of disputes with amounts claimed in respect of each such dispute along with the notice for appointment of arbitrator and giving reference to the rejection by the Chief Engineer of the appeal.

It is also a term of this contract that no person, other than a person appointed by such Chief Engineer I&FC or Additional Director General or Director General of Works, I&FC, as aforesaid should act as arbitrator and if for any reason that is not possible, the matter shall not be referred to arbitration at all.

It is also a term of this contract that if the contractor does not make any demand for appointment of arbitrator in respect of any

claims in writing as aforesaid within 120 days of receiving the intimation from the Engineer-in-charge that the final bill is ready for payment the claim of the contractor shall be deemed to have been waived and absolutely barred and the Government shall be discharged and released of all liabilities under the contract in respect of these claims.

The arbitration shall be conducted in accordance with the provisions of the Arbitration and Conciliation Act, 1996 (26 of 1996) or any statutory modifications or re-enactment thereof and the rules made thereunder and for the time being in force shall apply to the arbitration proceedings under this clause.

It is also a term of this contract that the arbitrator shall adjudicate on only such disputes as are referred to him by the appointing authority and give separate award against each dispute and claim referred to him and in all cases where the total amount of the claims by any party exceeds Rs.1,00,000/-, the arbitrator shall give reasons for the award.

It is also a term of the contract that if any fees are payable to the arbitrator, these shall be paid equally by both the parties.

It is also a term of the contract that the arbitrator shall be deemed to have entered on the reference on the date he issues notice to both the parties calling them to submit their statement of claims and counter statement of claims. The venue of the arbitration shall be such place as may be fixed by the arbitrator in his sole discretion. The fees, if any, of the

arbitrator shall, if required to be paid before the award is made and published, be paid half and half by each of the parties. The cost of the reference and of the award (including the fees, if any of the arbitrator) shall be in the discretion of the arbitrator who may direct to any by whom and in what manner, such or any part thereof shall be paid and fix or settle the amount of costs to be so paid."

7. The learned counsel appearing on advance notice does not dispute the existence of an arbitration agreement (the above quoted arbitration clause) and has no objection, if an arbitrator is appointed. The parties are also agreeable for the arbitration to be conducted under the aegis of the Delhi International Arbitration Centre (DIAC).

8. Accordingly, with the consent of the parties, 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 29.11.2016 at 11:00 AM. The arbitration shall be conducted under the aegis of DIAC and in accordance with its Rules.

9. The petition stands disposed of.

10. Order *dasti* to both the parties.

VIBHU BAKHRU, J

NOVEMBER 04, 2016

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