

\$~36

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

+ **ARB.P. 798/2016**

MIS ADVIK GLOBAL LIMITED Petitioner

Through: Ms Renuka Arora, Advocate.

versus

UNION OF INDIA Respondent

Through: Mr Praveen Kumar Jain and Mr
Naveen Kumar Jain, Advocate with
Mr Amar Singh, Superintendent
Engineer of CPWD.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER

%

19.12.2016

IA No.15657/2016

Allowed, subject to all just exceptions.

ARB.P. 798/2016

1. The petitioner has filed the present 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 between the parties. It is stated that the respondent floated a tender for construction of Afghan Parliament at Kabul which, *inter alia*, included works for indoor electrical fittings and light fixtures. The petitioner bid for the works relating to the electrical fittings and light fixtures, which was accepted by a letter of acceptance dated 23.03.2014.

2. The Agreement between the parties included an arbitration clause

which is set out below:-

“14. Except were otherwise provided in the contract all questions and disputes relating to the meaning of the specification designs drawing and instructions herein mentioned 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 of or relating to the contract, design drawings, specifications estimates instructions orders or these conditions or otherwise concerning the works or the execution of failure to execute the same whether arising the progress of the work or after the completion abandonment thereof shall be referred to the sole arbitration of the be no objection to any such appointed that the arbitrator so appointed is a Government servant that he had deal with the matter to which the contract relates and that in the course of his duties as Govt. servant he had expressed views on all or any of the matters in disputes or difference. The arbitrator to whom the matter is originally referred being transferred or vacating his office of being unable to act for any reason, such C.E. or administrative head as aforesaid at the time of such transfer vacation of office or inability to act shall appoint another person to act as arbitrator in accordance with the terms of the contract, Such persons 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 one person other than a person appointed by such C.E. or administrative head of the C.P.W.D. 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.

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

It is a term of the contract that the parties 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 such dispute.

The arbitrator (s) may from time to time with consent of the parties enlarge the time, for making and publishing the award.”

3. In view of the disputes that had arisen, the petitioner issued a letter dated 29.04.2016 calling upon the respondent to appoint a Sole Arbitrator to adjudicate the disputes between the parties. The respondent responded to the aforesaid letter by refuting the claims made by the petitioner. However, the respondent did not appoint the Arbitrator as requested.

4. The learned counsel for the respondent does not dispute the existence of the agreement or the arbitration clause. He, however, states that since the claims made by the petitioner were refuted by the respondent by its letter dated 17.05.2016 it was necessary for the petitioner to once again call upon the respondent to appoint an Arbitrator.

5. In my view, the aforesaid contention is wholly bereft of any merit. The petitioner had, by its letter dated 29.04.2016 listed out its various claims and disputes and had unequivocally stated as under: -

“We, therefore, invoke the arbitration between the parties. We request your good self to appoint a sole arbitrator to adjudicate upon the disputes between the parties.”

6. In view of the aforesaid unequivocal request to appoint an arbitrator, it is not open for the respondent to contend that the petitioner was obliged to

once again to make a similar request only because the disputes that indicated in the letter had been refuted by the respondent.

7. Accordingly, an Arbitrator is required to be appointed to adjudicate the disputes between the parties.

8. Mr Brajesh Kumar, (Retired, ADJ) (Mobile No.9968139955), is appointed as an Arbitrator to adjudicate the disputes between the parties. This is subject to the Arbitrator making the necessary disclosure under Section 12 of the Act and not being ineligible under Section 12(5) of the Act. The arbitrator's fees are fixed as per schedule IV to the Act. The parties are at liberty to approach the Arbitrator for further proceedings.

9. The petition is disposed of.

10. *Dasti*

VIBHU BAKHRU, J

DECEMBER 19, 2016
MK