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

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Judgment delivered on: 25.08.2017

+ ARB.P. 44/2017

HOSPITECH MANAGEMENT CONSULTANTS P. LTD.

..... Petitioner

versus

DIRECTOR GENERAL MARRIED

..... Respondent

Advocates who appeared in this case:

For the Petitioner : Mr. Udit Seth, Advocate.

For the Respondent : Mr. Praveen Kumar Jain and Mr. B.P. Maitra,
Advocates with Mr. I.P. Singh, Deputy Director
(contract)

CORAM:-

HON'BLE MR JUSTICE SANJEEV SACHDEVA

JUDGMENT

25.08.2017

SANJEEV SACHDEVA, J. (ORAL)

1. The petitioner by this petition under Section 11(6) of the Arbitration & Conciliation Act, 1996 (hereinafter referred to as the Act) seeks appointment of an Arbitrator.

2. On 22.05.2009, the petitioner was appointed as a Consultant to provide Consultancy Services of Detailed Engineering and Project

Management Service to respondent for its project at Babina and Saugar.

3. During execution of the work, certain disputes had arisen leading to the termination of the contract and invocation of the arbitration clause by the petitioner.

4. The arbitration clause between the parties reads as under:-

“ARTICLE 17 SETTLEMENT OF DISPUTES

All disputes, between the parties to the contract (other than those for which the decision of the DGMAP or any other person is by the contract expressed to be final and binding) shall, after written notice by either party to the contract to the other of item, be referred to the sole Arbitration of serving officer having degree in Engineering or equivalent or having passed Final! Direct Final Examination of Sub-Division II of Institution of Surveyors (India) recognized by the Govt. of India to be appointed by the Engineer-in-Chief, E-in-C's Branch, Kashmir House, new Delhi-110011 or Director General of Works if specifically delegated in writing by Engineer-in-Chief, Army Headquarters, New Delhi whose decision shall be final, conclusive and binding. The Arbitration shall be governed by Arbitration and Conciliation. Act, 1996.

Unless both parties agree in writing, such reference shall not take place until after the completion or alleged completion of the Works or termination or determination of the Contract under conditions of the contract.

Provided that in the event of abandonment of the works or cancellation of the Contract under conditions of this

contract, such reference shall not take place until alternative arrangements have been finalized by the owner to get the works completed by or through any other consultant or consultants as provided in conditions of this contract.

If the Arbitrator so appointed resigns his appointment or vacates his office or is unable or unwilling to act due to any reason whatsoever, the authority appointing him may appoint a new Arbitrator to act in his place.

The Arbitrator may proceed with the arbitration exparte, if either party, in spite of notice from the Arbitrator, fails to take part in the proceedings.

The Arbitrator shall give his reasoned award in Writing on all matters referred to him and shall indicate his findings, along with sums awarded/separately on each individual item of dispute.

The venue of arbitration shall be such place or places as may be fixed by the Arbitrator in his discretion. .

The language of the arbitration proceedings and that of all documents any communications between the parties shall be "English".

The award of the Arbitrator shall be final and binding on both the parties to the contract.

Notwithstanding the fact that the stations of work are anywhere in India, only the courts at Delhi/New Delhi shall have the jurisdiction to adjudicate and settle any disputes between OWNER and the consultant, No other court outside Delhi/New Delhi shall have any jurisdiction on any matter requiring reference to Civil Court.

5. The petitioner invoked the arbitration clause by notice dated 19.07.2016 followed by notice dated 04.10.2016.

6. Learned counsel for the petitioner submits that though the arbitration clause prescribes that the arbitration shall be by a Sole Arbitration of a serving officer having a degree in Engineering, he submits that a serving officer would be disqualified under Section 12(5) of the Act, as amended by the Arbitration & Conciliation (Amendment) Act, 2015.

7. Learned counsel for the respondent submits that he has no objection to the appointment of an independent sole Arbitrator provided the Arbitrator satisfies the other requirement i.e. having a degree in Engineering or equivalent, as described by the clause.

8. In view of the above, Mr. Bhupesh Narula, Advocate, (Mobile No. 9810260246), who also has a degree in Engineering and satisfies the requirements of the Clause, is appointed as the Arbitrator to adjudicate the disputes between the parties. This is subject to the Arbitrator making the necessary disclosures under Section 12 of the Act of not being ineligible under Section 12(5) of the Act.

9. The Arbitrator shall adjudicate the claims of the petitioner and the counter claims, if any of the respondents.

10. The fee of the Arbitrator shall be as per the Fourth Schedule of the Arbitration & Conciliation Act, 1996, as stipulated in the contract.

11. Venue of the arbitration shall be fixed by the arbitrator at his discretion subject to the convenience of the parties.

12. The parties are at liberty to approach the learned Arbitrator for elucidating the necessary disclosures and for further proceedings.

13. The petition is, accordingly, disposed of in the above terms.

14. Order *Dasti* under signatures of the Court Master.

AUGUST 25, 2017
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SANJEEV SACHDEVA, J

