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

+ **ARB.P. 86/2017**

FIBROPLAST MARINE PVT. LTD. Petitioner
Through **Mr.S.M.Bhaskar, Advocate**

versus

MINISTRY OF HOME AFFAIRS Respondent
Through **Mr.Praveen Kumar Jain & Ms.Sheetal
Raghuvanshi, Advocates**

CORAM:

HON'BLE MR. JUSTICE JAYANT NATH

ORDER

% **04.05.2017**

1. This petition is filed under Section 11(6) of the Arbitration and Conciliation Act 1996 seeking appointment of an arbitrator for adjudication of the dispute between the parties.
2. The respondent had floated a tender enquiry for supply of 624 Inflatable Motor Boats (10 Seated) with OBM for the NDRF Battalions. On 23.04.2015 the bid of the peititoner was accepted.
3. Disputes have arisen between the parties. On 22.06.2016 the petitioner invoked the arbitration clause and sent notice to the respondent. In the meantime, the respondent sought to invoke bank guarantees of the sum of Rs.2,58,16,200/-. The petitioner filed a petition bearing OMP (I) COMM. No. 278/2016 under Section 9 of the Arbitration & Conciliation Act, 1996. However, the bank guarantees were encashed. The petition was disposed of.
4. As per agreement between the parties, there exists an arbitration clause being clause No.2.4. The said clause reads as follows:
“2.4. Clause 24 i.e. Arbitration

In the event of any question, dispute or difference arising under these conditions or any special conditions of contract, or in connection with this contract (except as to any matters, the decision of which is specifically provided for by these or the special conditions), the same shall be referred to the sole arbitration of an officer in the Min. of Law, appointed to be arbitrator by the Director General, NDRF. It will be no objection that the arbitrator is a government servant that he had to deal with the matter to which the contract relates or that in the course of his duties as a government servant he has expressed views on all or any of the matter in dispute or difference. The award of the Arbitrator shall be final and binding on the parties to this contract, it is term of this contract that:-

It the arbitrator be a person appointed by the DG, NDRF:-

a) In the event if his dying, neglecting or refusing to act, or resigning or being unable to act, for any reason or his award being set aside by the court for any reason, it shall be lawful for the security, Min of Home Affairs; either to proceed with the reference himself or to appoint another person as arbitrator in place of the outgoing arbitrator, as the case may be on record of proceeding and then take in arbitration, or to commence the proceeding de novo as he may at his discretion decide.

(b) It is further a term of contract that no person other than the person appointed by him should act as Arbitrator and that if for any reason that is not possible, the matter is not to be referred to arbitration at all. The Arbitrator may with the consent of all the parties to the contract enlarge the time from time to time for making and publishing the award. Upon every and such reference, the assessment of the cost incidental to the reference and award respectively shall be in the discretion of the Arbitrator.

Subject as aforesaid, the Arbitration Act, 1940 and the rules thereunder and any statutory modification thereof for the time

being in force shall be deemed to apply the arbitration proceedings under this clause.

The venue of the arbitration shall be the place where the contract is concluded or such other place as the DG, NDRF at his discretion may determine.

In this clause the expression the DG, NDRF means the Director General, NDRF of the Ministry of Home Affairs for the time being, and includes, if there be no DG, the Officer who is for the time being the administrative head of the NDRF, where in addition to other functions or otherwise.”

5. The learned counsel appearing for the respondent submits that invocation of arbitration clause by the petitioner on 22.06.2016 was premature as the last date for performance of contract was 25.06.2016. He submits that in case the petitioner seeks invocation of the arbitration clause, he needs to file a fresh petition. He further relies upon a judgment of the Supreme Court in the case of ***Union of India v. Mohan Aggarwal Construction Company***, C.A.No.1167/2015 dated 22.01.2015 to contend that in view of the above arbitration clause, the arbitrator could only be appointed by the Director General, NDRF and any other arbitrator would not have any jurisdiction.

6. As far as the first submission of the respondent is concerned, it is clearly without any merit. Even if the invocation of the arbitration clause was premature as the contract had expired, that cannot mean that the disputes could not be arisen between the parties. In any case, the filing of this petition itself implies invocation of the arbitration clause. The submission of the respondent is clearly without any merit.

7. Keeping in view the arbitration clause, the Director General, NDRF is

requested to appoint an arbitrator in terms of the arbitration clause within four weeks from today.

8. The petition stands disposed on the above terms.

JAYANT NATH, J.

MAY 04, 2017/v