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

+ ARB.P. 109/2017

GAUTAM TECHNO SANITATION
PRIVATE LIMITED

..... Petitioner

Through: Mr Sanjeev Kumar Sharma and Mr
Jitendra Kumar Jhadav, Advocates.

versus

THREE C INFRA PRIVATE LIMITED

..... Respondent

Through: Mr Mahjabeen Tanweer, Advocate.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER

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07.03.2017

1. The petitioner has filed the present petition 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 that have arisen between the parties in respect of the Letter of Intent (LOI) dated 22.05.2013 and the Work Order dated 17.06.2013.

2. The petitioner was appointed as a contractor for “*Supply, Installation, Testing and Commissioning of Plumbing and Fire Fighting Systems at Lotus Zing*”, by the LOI dated 22.05.2013. The LOI includes an arbitration clause, which reads as under:-

"Arbitration:

Any difference or dispute arising between the Parties arising

out of or in relation to this Contract shall first be amicably resolved and failing amicable resolution, the Parties shall refer the difference or dispute to arbitration by a sole Arbitrator to be appointed by the Client within 30 days from the date on which the arbitration agreement is invoked by either of the parties.

'The Contractor' hereby confirms that it shall have no objection to the appointment of the Arbitrator by mutual consent. The arbitration shall be conducted in accordance with the Arbitration & Conciliation Act, 1996. The venue of the arbitration shall be at New Delhi and the language shall be English. The Parties shall be entitled to obtain interim and other relief from the court of competent jurisdiction."

3. Subsequently, the respondent issued the Work Order dated 17.06.2013, which also includes an arbitration clause that is similarly worded as the arbitration clause contained in the LOI and as set out above.

4. The petitioner states that there was no dispute between the parties up to the 13th RA bill. The petitioner submitted its 14th RA Bill on 13.07.2015. The petitioner claims that since the said bill was not settled, the petitioner issued a legal notice dated 02.04.2016.

5. Thereafter, the petitioner filed a petition under Section 9 of the Act before the ADJ, South-East (numbered as Suit no. 43/2016) for seeking interim relief. It is stated that the said petition is still pending. The petitioner also filed another petition under Section 9 of the Act (numbered as Suit No.21268/2016), *inter alia*, praying that the respondent be restrained from invoking the bank guarantee and on this application, the Court issued an ad interim order on 30.08.2016 interdicting the invocation of the bank

guarantee. However, it is stated that the petitioner withdrew the said petition and the respondent has since encashed the bank guarantee.

6. In the meanwhile, the respondent issued a notice dated 27.09.2016 invoking the arbitration clause. The respondent also informed the petitioner that it had appointed Mr S.W. Haider, Advocate as the Sole Arbitrator to adjudicate the disputes between the parties. This was objected to by the petitioner by its letter dated 22.10.2016 and the petitioner named Mr Er. Vishnu Dutt Gautam as the arbitrator.

7. The learned counsel appearing for the respondent did not dispute the existence of the LOI, the Work Order or the arbitration clause. However, she contended that since the respondent had already appointed the arbitrator, the present petition did not survive. She earnestly contended that since the petitioner had not applied for revoking the mandate of the arbitrator appointed by the respondent, the present petition was not maintainable.

8. The learned counsel for petitioner asserted that in terms of the arbitration clause, the parties were first required to endeavour to resolve the disputes amicably before referring the disputes to arbitration and this exercise was not undertaken. The learned counsel appearing for the respondent disputes that efforts for an amicable resolution of the disputes were not made; according to the respondent, the parties had attempted to resolve the disputes amicably but the efforts were in vain.

9. Be that as it may, since both the parties have invoked the arbitration clause and sought appointment of an arbitrator, it is not open for the petitioner to now assert that the parties should have attempted to resolve the

disputes before invoking the arbitration clause.

10. The only controversy that remains to be addressed is whether the respondent was required to obtain the consent of the petitioner before appointing the arbitrator as, concededly, the petitioner had not consented for appointment of Mr S.W. Haider as the sole arbitrator.

11. A plain reading of the arbitration clause indicates that although the respondent was to appoint the arbitrator, the arbitrator was to be selected by mutual consent. Admittedly, no efforts were made by the respondent to secure the concurrence of the petitioner before appointing the arbitrator. Thus, plainly, the appointment is not in terms of the arbitration clause.

12. Since there is no dispute as to the existence of the arbitration agreement (arbitration clause), an arbitrator is required to be appointed and since the parties have been unable to agree on the appointment of the arbitrator, an arbitrator is required to be appointed by this Court.

13. Accordingly, Mr Ravi Kant Chadha, Senior Advocate (Mobile No. 9811024601), is appointed as the Sole Arbitrator to adjudicate the disputes between the parties arising in connection with the LOI dated 22.05.2013 and the Work Order dated 17.06.2013.

14. 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 fee shall be fixed in consultation with the learned counsel for the parties. The parties are at liberty to approach the arbitrator

for holding a preliminary hearing.

15. The petition is disposed of.

MARCH 07, 2017
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VIBHU BAKHRU, J