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

+ **ARB.P. 181/2017**

URC CONSTRUCTION PRIVATE LIMITED Petitioner

Through: Mr Tarun Sharma, Mr Boudh Prabha
and Ms Akanksha Kapoor,
Advocates.

versus

ENGINEERS INDIA LIMITED Respondent

Through: Mr Navin Kumar, Ms Manalisha
Choudhury and Ms Rashmeet Kaur,
Advocates.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER

% **17.04.2017**

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 relation to the agreement dated 10.05.2011. The bidding documents, which are admittedly, applicable to the contract in question, include an arbitration clause (arbitration agreement). The relevant extract of which is set out below:-

“83.1 Settlement of Disputes by Arbitration other than mentioned in 83.2 below:-

Except where otherwise provided in the Contract any question, dispute or difference that shall arise between Owner on the one hand and the Contractor on the other

hand as to the construction, intent, meaning or effect of the Contract Documents, designs, drawings, specifications, estimates or any one of them or as to any further Drawings to be prepared or as to the application of the Schedule Of Rates, to the measurements taken or as to the materials or the quality thereof or as to execute the same whether arising during the progress of Work, or within six (6) months of completion or abandonment thereof or as to any matter or thing, whether of the nature aforesaid or otherwise, however, arising out of or in any way relating to or connected with the Contract then EVERY SUCH QUESTION, DISPUTE OR DIFFERENCE (except where otherwise herein expressly provided) shall be referred to a SOLE ARBITRATOR to be appointed by the parties by mutual consent within one (1) month from the date of notice of either party requiring an arbitrator to be appointed for resolving such disputes.

In the event of the parties being unable to agree to a sole arbitrator within the specified time, the sole arbitrator shall be appointed by the Managing Director of Owner/EIL.

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 reenactment thereof and the rules made there under and for the time being in force shall apply under this clause."

2. The petitioner asserts that certain disputes have arisen between the parties and, accordingly, it invoked the arbitration clause by a letter dated 09.01.2017.
3. The learned counsel for the respondent had suggested three names and called upon the petitioner to select anyone of the names to be appointed as

an arbitrator. The petitioner concurred on appointment of Justice Manmohan Singh (Retd.) as suggested by the respondent. However Justice Manmohan Singh (Retd.) would be unable to act as an Arbitrator in view of his current assignment as the Presiding Officer of one of the tribunals in India.

4. In the circumstances, there can be no dispute that an arbitrator is required to be appointed. Accordingly, Justice K. Ramamoorthy (Retired), a former Judge of this Court (Mobile No. +91 9810529889) is appointed as the sole arbitrator to adjudicate the disputes between the parties. This is subject to the arbitrator making the necessary disclosure under Section 12(1) of the Act and not being ineligible under Section 12(5) of the Act. The Arbitrator shall fix his fee in consultation with learned counsel for the parties. The parties are at liberty to approach the arbitrator for eliciting the necessary disclosure and for further proceedings.

5. The petition is disposed of.

6. Order *dasti*.

VIBHU BAKHRU, J

APRIL 17, 2017
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