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

+ **ARB.P. 160/2017**

GORKHA SECURITY SERVICES Petitioner

Through: Mr. Mridul Jain, Adv.

versus

BHARAT SANCHAR NIGAM LIMITED

..... Respondent

Through:

CORAM:

HON'BLE MR. JUSTICE NAVIN CHAWLA

ORDER

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14.12.2017

This petition under Section 11 of the Arbitration and Conciliation Act, 1996 has been filed by the petitioner seeking appointment of a Sole Arbitrator for adjudicating the disputes that have arisen between the parties in relation to the Award of work of housekeeping contract for o/o GM (QA), CTS Compound, Netaji Nagar, New Delhi - 110023 and (QA-2), o/o DGM(QA-I), K. L. Bhawan, Janpath, New Delhi. The agreement between the parties contains an Arbitration Agreement in form of Clause 3.65, which is reproduced herein below:-

“3.65 All disputes arising between the Contractor and the DIVISIONAL ENGINEER out of this contract shall be referred to the sole arbitration of The GM (QA), CTS Compound, Netaji Nagar, New Delhi-110023 or an officer appointed by him on his behalf. Any such dispute shall be referred to the sole arbitrator within a period of SIX MONTHS from the date of settlement of final bill. The award of the Sole Arbitrator shall be final and binding on the parties to the dispute. The dispute shall be referred to the Sole Arbitrator in the following

manner:

- a) In case parties are unable to reach a settlement by themselves, the dispute shall be submitted for arbitration in accordance with contract Agreement.*
- b) There shall not be a joint submission to the sale Arbitrator. Each party should submit its own claim severally and may oppose the claim put forward by the other party.*
- c) The onus of establishing the claims of the Contractor will be left with him only. The claim of the Contractor will be firmly resisted by utilising all the evidence available with the BSNL.*
- d) Once a claim has been included in the submission by the Contractor, alteration or modification thereof will be opposed by BSNL.*
- e) The "Points of Defense" will be based on actual conditions of the contract. The question whether these conditions are equitable shall not receive any consideration in the preparation of "points of defense".*
- f) The Arbitrator shall not entertain claims in the nature of ex-gratia payments, as these are not contractual obligations.*
- g) If the Contractor includes such claims in his submission, the fact that they are not contractual will be prominently placed before the Arbitrator.*
- h) In case the amount involved is heavy, the DIVISIONAL ENGINEER may be within his rights to conduct the Defense by the Government Pleader”.*

The petitioner invoked the Arbitration Agreement vide its letter dated 26.06.2016, however, having received no response, the present petition was filed.

Notice of the petition was issued by this Court on 2nd March, 2017 recording therein that though an advance copy of the petition had been duly served on the Standing Counsel for the respondent, none had appeared for the respondent when the matter was called.

As no one appeared for respondent, vide order dated 15.05.2017, the learned counsel for the petitioner was granted liberty to serve a fresh copy of the petition on the Standing Counsel for the respondent. However, again none appeared for the respondent on 20.07.2017, when this Court again issued a formal notice through the Standing Counsel for the respondent. In spite of repeated service of the notices on the respondent, none appeared for the respondent on 09.11.2017 and even today.

In view of the above, I see no impediment in appointing a Sole Arbitrator for adjudicating the disputes that have arisen between the parties in relation to the above work. I accordingly refer the parties to the Delhi International Arbitration Centre, who shall appoint a Sole Arbitrator for adjudicating the disputes that have arisen between the parties. The Arbitration and fee shall be governed by the DIAC rules.

The petition is allowed in the above terms.

Dasti.

NAVIN CHAWLA, J

DECEMBER 14, 2017/rv