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

+ ARB.P. 191/2017

OM VAJRAKAYA CONSTRUCTION CO. Petitioner
Through: Mr. Syed Wasif Haider, Advocate

versus

UNION OF INDIA Respondent
Through: Mr. Amitara Poddar, Advocate

CORAM:

HON'BLE MR. JUSTICE JAYANT NATH

ORDER

% **13.09.2017**

1. This petition is filed under Section 11 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as the Act) for appointment of an independent arbitrator to adjudicate the claims of the petitioner.

2. Some of the relevant facts are that the work pertaining to Earthwork in cutting & filling in formation, construction of minor bridges Road, under bridges, Trolley Refuges, allied works & protection works from Km. 44.590 to Km. 52.315 in Zone no. 18 between Amb Andaura to Daulatpur Chawk block section etc. was awarded to the petitioner vide agreement dated 23.7.2010 for a sum of Rs. 11,05,66,319.54. The agreement was entered into between the parties on 29.10.2010. Disputes have arisen between the parties, the petitioner invoked the arbitration clause on 11.3.2016.

3. The respondents vide their communication dated 28.12.2016 appointed an arbitrator comprising of three members, two of whom

are retired officers of the Railways and the Presiding arbitrator, one of them is a serving employee of the Railways.

4. The contention of the petitioner is that the appointment of the Tribunal has been effected by the petitioner only for part of the claims as referred by the petitioner. It is stated that all the claims were mentioned in notice dated 11.3.2016. However, claims no. 6 and 8 to 14 as elaborated by the petitioner in the said notice dated 11.3.2016 have not been referred to arbitration.

5. Admitted fact is that there exist an arbitration clause between the parties, which is Clause 64 (3) (A) (ii) of the GCC-1999.

6. Learned counsel appearing for the respondent submits that the left out claim can also be referred for arbitration to the Arbitral Tribunal already constituted by the Railways.

7. The petitioner however submits that this submission is not acceptable as two arbitrators appointed are former employees of the Railways and the presiding officer is a serving employee of the Railways. He submits that the appointment of such an arbitrator would be contrary to Section 12(5) read with 7th Schedule of the Act. Reliance is also placed upon the judgment of the Supreme Court in ***Datar Switchgears vs. Tata Finance Ltd., (2000) 8 SCC 151*** to contend that in view of the fact that the respondent have not been taken steps in terms of the arbitration clause, this Court has the power to appoint any arbitrator to adjudicate the disputes between the parties.

8. Accordingly, I appoint Justice H.R.Malhotra (Retd.), (Mobile No.9818000400) as the Sole Arbitrator to adjudicate the disputes

between the parties (claims no. 6 and 8 to 14 as stated in notice dated 11.03.2014). He will act under the newly amended Arbitration and Conciliation Act, 2006. The arbitration proceedings will take place under the aegis of the Delhi International Arbitration Centre (DIAC). A Copy of this order be sent to DIAC and the learned Arbitrator.

9. The petition stands disposed of.

JAYANT NATH, J

SEPTEMBER 13, 2017/P