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

+ **ARB.P. 235/2017**

KIRAN INFRA ENGINEERS LIMITED Petitioner

Through **Mr. Siddharth Sharma, Advocate**

versus

NORTHERN RAILWAYS Respondent

Through **Ms. Ananya Poddar, Proxy for
Mr. Amitva Poddar, Advocate**

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER

% **09.05.2017**

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 contract dated 30.06.2010 entered into between the parties. The said contract includes an arbitration clause which is set out below:-

“40.1 ARBITRATION

- (i) In the event of any dispute or difference between the parties hereto as to the construction or operation of this contract, or the respective rights and liabilities of the parties on any matter in question, dispute or difference on any account or as to the withholding by the Railway of any certificate to which the contractor may claim to be entitled to, shall be referred by the contractor to the GM and the GM shall be within 120 days after receipt of the contractor's representation

make and notify decisions on all matters referred to by the contactor in writing or if the GM fails to make a decision within 120 days, then and in any such case, but except in any of the 'excepted matters' (matters not arbitrable and decision of the Rly authority, thereon shall be final and binding on the contractor, provided further that 'excepted matters' shall stand specifically excluded from the preview of the arbitration clause), the contractor, after 120 days but within 180 days of his presenting his final claim on disputed matters shall demand in writing that the dispute or difference be referred to Arbitration.”

2. In terms of the said clause, the petitioner sent a letter dated 06.02.2016 to the General Manager, Northern Railways requesting for resolution of its claims. It is stated that no response to the said letter was received from the respondent. In the circumstances, the petitioner was constrained to send another letter dated 17.05.2016 invoking the arbitration clause, however, the respondent did not respond to this too. Finally, the petitioner caused a legal notice dated 15.09.2016 to be sent once again reiterating its request for appointment of an arbitrator. This notice was responded to by a letter dated 22.10.2016 whereby the respondent requested the petitioner to submit price variation bills for the work executed after the date of completion (DOC). The learned counsel for the petitioner states that whether the petitioner is entitled to price variation for work executed prior to DOC is also one of the questions that requires to be adjudicated upon.

3. The learned counsel for the respondent states that she has instructions that the process for appointment of arbitrator is underway.

4. It is, thus plainly evident that there is no dispute as to the existence of the arbitration clause. And, since an arbitrator has not been appointed as yet, it is necessary to appoint an arbitrator in the present matter.

5. Accordingly, Mr Charanjit Jawa, District & Sessions Judge (Retired), (Mobile No.9811092067) 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 of the Act and not being ineligible under Section 12(5) of the Act. The arbitrator's fees shall be fixed in consultation with the counsel for the parties. The parties are at liberty to approach the arbitrator for necessary disclosure and further proceedings.

6. The petition is disposed of.

VIBHU BAKHRU, J

MAY 09, 2017

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