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

+ **ARB.P. 229/2017**

METRO TRANSIT PVT. LTD. Petitioner

Through Mr.Sushil Dutt Salwan, Mr.Aditya
Garg and Ms.Himani Kaushik, Advs.

versus

GOVERNMENT OF NCT OF DELHI Respondent

Through Mr.Peeyoosh Kalra, ASC, GNCTD
with Ms.Sona Babbar and Ms.Swati, Advs.

CORAM:

HON'BLE MR. JUSTICE JAYANT NATH

ORDER

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11.05.2017

1. This petition is filed under Section 11(6) of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as the Act) seeking appointment of a former judge of this court as a sole arbitrator to adjudicate the disputes between the parties.
2. The petitioner entered into a Concessionaire Agreement on 20.06.2013 with the respondent. The disputes having arisen between the parties, the petitioner on 02.09.2016 invoked the arbitration clause.
3. On 30.09.2016, the respondent in terms of the arbitration clause appointed Ms. Kiran Dhingra, IAS, (Retd.) as the sole arbitrator. Subsequently, the petitioner raised objections pointing out that the appointment of the said learned Arbitrator is contrary to the provisions of Section 12(5) read with the Seventh Schedule of the Act. Vide order dated

23.11.2016, a new arbitrator was appointed by the respondent, namely, Sh.G.K.Marwah, IAS (Retd.). On 24.03.2017, the said learned Arbitrator expressed his inability to proceed with the arbitration proceedings citing some personal family reasons.

4. The admitted position is that the Agreement between the parties has an arbitration Clause i.e. Clause 22 of the Agreement. As per Clause 22.2 of the Agreement, in case of disputes between the parties, the Department of Transport shall appoint a sole arbitrator within 30 days of invocation of the arbitration clause. The position is that despite invocation of the arbitration clause, the respondent have failed to appoint a proper arbitrator as per the statutory provisions.

5. Learned counsel appearing for the respondent very fairly submits that in these facts and circumstances, as to take the matter forward, it would be appropriate that this court may appoint a retired judge of this court as an arbitrator.

6. Accordingly, .Justice R.C.Chopra (Retd.) (Mobile No.9818097777) is appointed as a sole arbitrator to adjudicate the disputes between the parties. The appointment of the learned Arbitrator is subject to compliance of the provisions under Section 12(1) of the Act. The learned Arbitrator shall fix his fees in consultation with the learned counsel for the parties.

7. The parties to appear before the learned Arbitrator on 24.05.2017 at 4.00 P.M.

8. In view of the above, the petition stands disposed of.

JAYANT NATH, J

MAY 11, 2017/rb