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

+ ARB.P. 256/2017

BC INFRA PROJECTS PRIVATE LIMITED Petitioner
Through Mr.Abhishek Paruthi, Adv.

versus

KMC CONSTRUCTIONS LIMITED Respondent
Through Ms.Biji Rajesh, Adv. with
Mr.Pushkar Taimni and Mr.Tushar Parashar,
Advs.

CORAM:

HON'BLE MR. JUSTICE JAYANT NATH

ORDER

% **01.05.2017**

1. The present petition is filed under Section 11(6) of the Arbitration and Conciliation Act, 1996 seeking appointment of a Presiding Arbitrator to decide/adjudicate disputes between the parties.
2. The parties entered into an agreement on 21.09.2011 whereby the respondent awarded a contract to the petitioner for construction of structures to be undertaken for widening and upgradation of the existing 4 lane road to 6 lane road in the State of Haryana as specified in the contract subject to terms and conditions. The contract was said to be initially awarded at the price of Rs.11.8 crores. Later, the contract value was reduced to Rs.4.7 crores.
3. As disputes arose between the parties in terms of the Arbitration Clause, on 02.11.2016 the petitioner invoked the arbitration clause and appointed Sh.Rakesh Kumar, Advocate as its Arbitrator. On 24.11.2016, the respondent appointed Sh. Kamlesh Kumar as its Arbitrator. As there was no unanimity between the arbitrators on the appointment of the third

Arbitrator/Presiding Arbitrator in terms of the arbitration clause, the petitioner on 21.02.2017 requested the President of Indian Roads Congress, New Delhi for appointment of the Presiding Arbitrator. It is the case of the petitioner that the said Indian Roads Congress has failed to do the needful.

4. The relevant arbitration clause is clause 67.3 of the agreement between the parties. It provides that the arbitral tribunal shall be of three arbitrators, one each to be appointed by the parties. The third arbitrator is to be chosen by the two arbitrators. In case of failure to reach a consensus, the same was to be appointed by the Appointing Authority, namely, the President, Indian Roads Congress.

5. Learned counsel for the respondent submits that she has no objection in case the court appoints the third arbitrator/Presiding Arbitrator. She, however, submits that as the matter is a technical matter, it will be in the interest of justice that a person who is technically conversant should be appointed as an arbitrator.

6. Accordingly, Mr.S.R.Pandey, (Retd.) Additional Director General, CPWD who is on the panel of Delhi International Arbitration Centre is appointed as the third arbitrator/Presiding Arbitrator. His appointment is subject to compliance of provisions of Section 12 of the Arbitration and Conciliation Act, 1996. The parties agree that the arbitration proceedings may be carried out under the aegis of DIAC. The fee structure of the Arbitrator shall be as per the rules and regulations of DIAC.

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

8. Dasti.

JAYANT NATH, J

MAY 01, 2017/rb

