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

+ **ARB.P. 626/2016**

MADHUR GUPTA

..... Petitioner

Through: Mr Ankit Gupta, Advocate.

Versus

**VIDYADAAN INSTITUTE OF TECHNOLOGY
AND MANAGEMENT & ORS.**

..... Respondents

Through: Mr Manoj K. Mishra, Mr Umesh
Dubey and Mr Sandeep Kumar
Dwivedi, Advocates.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER

% **06.02.2017**

1. The petitioner has filed the present petition under Section 11 of the Arbitration and Conciliation Act, 1996 (hereafter 'the Act') praying that an Arbitrator be appointed to adjudicate the disputes that have arisen between the parties in connection with the Agreements dated 08.04.2011 read with addendum agreements dated 19.04.2012. In terms of the arbitration clause between the parties, the disputes are required to be referred to Mr P. C. Gupta, in accordance with the provisions of the agreements between the parties.

2. The learned counsel for the respondents has raised two objections to the present petition. First, that the petitioner has not issued any notice invoking the arbitration clause and second that the petitioner's claims are barred by limitation.

3. Insofar as the second contention is concerned, the question whether

the petitioner's claims are barred by limitation would be considered by the Arbitral Tribunal, as and when constituted. Insofar as the first objection that the petitioner has not invoked the arbitration clause is concerned, the learned counsel for the petitioner states that the petitioner has approached this court directly since Mr P. C. Gupta who was a named Arbitrator, is also connected with the parties and has also witnessed the addendum agreements executed on 19.04.2012. He submitted that therefore, Mr P. C. Gupta would be ineligible to act as an Arbitrator in terms of Section 12(5) of the Act.

4. The learned counsel for the respondents states that the respondents are agreeable that Mr P. C. Gupta be appointed as a Sole Arbitrator to adjudicate the disputes between the parties. The learned counsel for the petitioner is also agreeable to the same

5. The proviso to Section 12(5) of the Act expressly provides that if both the parties agree by an express agreement in writing, after the disputes have arisen, to refer the disputes to an arbitrator, who is otherwise ineligible to act as such, the bar under Section 12(5) of the Act would not be applicable. It is thus open for the parties to agree for appointment of Mr P. C. Gupta as an Arbitrator in writing.

6. The petitioner is also required to invoke the arbitration clause for commencement of the arbitral proceedings before approaching this court.

7. The petition is disposed of with the aforesaid observations.

VIBHU BAKHRU, J

FEBRUARY 06, 2017/MK