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

+ ARB.P. 419/2017

HOSPITECH MANAGEMENT
CONSULTANTS PVT.LTD

..... Petitioner

Through Mr.P.S.Bindra & Ms.Ashmita Yadav,
Advocates

versus

THE CHIEF ENGINEER

..... Respondent

Through Mr.Manish Mohan, CGSC with
Ms.Manisha Saroha, Advocate

CORAM:

HON'BLE MR. JUSTICE JAYANT NATH

ORDER

% **09.08.2017**

1. The present petition is filed under Sections 11 and 12 of the Arbitration and Conciliation Act, 1996 seeking to appoint a new arbitrator in place of the arbitrator appointed by the respondent.
2. Pursuant to a tender floated by the respondent to construct "Multi Storeyed Super Speciality Oncology Centre at Army Hospital (R&R) AF Delhi Cantt", the petitioner made a bid. The bid of the petitioner was accepted and a Consultancy Agreement dated 25.09.2013 was executed between the parties.
3. Disputes having arisen between the parties. The petitioner sought to invoke arbitration clause. On 31.10.2016, the Engineer in Chief appointed Mr.Girish Joshi, DDGW (Design), E-in-C Branch, IHQ of MoD (Army Kashmir House, Rajaji Marg, DHQ PO, New Delhi-110011 as sole arbitrator.

4. The grievance of the petitioner is that in terms of the Fifth Schedule read with Section 12 of the Arbitration & Conciliation Act 1996 (As amended), circumstances exist which give rise to justifiable doubts as to the independence or impartiality of the learned arbitrator. It is urged that to this effect a communication was sent to the learned arbitrator on 19.01.2017. A copy of this communication was also sent to the respondent. The respondent on 25.01.2017 wrote a communication advising the learned arbitrator that his appointment is legal and valid.
5. The learned arbitrator on 17.04.2017 ignoring the communication of the petitioner has requested the petitioner to submit their statement of claim by 05.05.2017.
6. The learned counsel for the respondent submits that in view of the fact that the arbitration has been invoked prior to October, 2015, the provisions of the Fifth Schedule of the Act would not apply.
7. After some arguments, the learned counsel for the petitioner submits that he would withdraw his communication dated 19.01.2017 filed before the learned arbitrator with liberty to file an appropriate application under Sections 12 and 13 of the Act.
8. Taking on record the above submission of the petitioner, the present petition stands disposed of. All the pending applications, if any, also stand disposed of.
9. Needless to add that in the eventuality of an application being filed by the petitioner, the learned arbitrator may deal with the same as per law.

JAYANT NATH, J.

AUGUST 09, 2017/v