

\$~1

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

+ ARB.P. 788/2016

M/S SMS CRANES NETWORK Petitioner

Through: Mr Rajendra Beniwal, Advocate.

versus

M/S ENERGO ENGINEERING
PROJECTS LTD

..... Respondent

Through: Mr Pratyush Parimal, Advocate.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER

%

21.03.2017

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 respect of the work order dated 18.08.2012 as amended by a work order dated 05.11.2012. The work order contains an arbitration clause, which is set out below:-

“4. All disputes to be referred to sole arbitration of EEPL Director at New Delhi.”

2. The petitioner had also filed a suit in the City Civil Court, Mumbai (S.C. Suit No.2009/2014). In the said suit, the respondent had filed a petition under Section 8 of the Act seeking that the parties be referred to arbitration. The said application was accepted and by an order dated 22.09.2016, the parties were referred to arbitration.

3. The learned counsel appearing for the respondent does not dispute the existence of the arbitration clause. He, however, submits that no notice invoking the arbitration clause has been sent.
4. Since the parties were referred to arbitration at the instance of the respondent, it is not necessary that a separate notice be issued.
5. It is pointed out that in terms of the arbitration clause, a serving employee of the respondent is to be appointed as an arbitrator which is now no longer permissible in view of Section 12(5) of the Act. In the circumstances, an arbitrator is required to be appointed.
6. Accordingly, Mr Sanat Kumar, Senior Advocate (Mobile No.: +91 9810295798) is appointed as an Arbitrator. 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 shall fix his fees in consultation with the counsel for the parties.
7. The parties are at liberty to approach the Arbitrator for eliciting the necessary disclosure and for further proceedings.
8. The petition is disposed of.

VIBHU BAKHRU, J

MARCH 21, 2017
MK