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

+ **ARB.P. 429/2017**

Date of decision: 10th November, 2017

M.P.TYAGI ENGINEERS & CONTRACTORS Petitioner
Through Ms.Seema Singh, Adv.

Versus

UNION OF INDIA & ANR Respondents
Through Mr.Jaswinder Singh, Adv.

CORAM:
HON'BLE MR. JUSTICE NAVIN CHAWLA

NAVIN CHAWLA, J. (Oral)

1. This petition under Section 11(6) of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as the 'Act') has been filed by the petitioner praying for an appointment of Sole Arbitrator to adjudicate the dispute between the parties.
2. The respondent had floated a tender "Special Repair to OFFRS MD ACCN BLDG No. P-111, 112 at DK-I, P-119, P-120 at RRRC and Repair Works of certain bldg in the area of age B/R-I under GE (Central) Delhi Cantt.-10". The petitioner participated in the tender and was issued an Acceptance Letter No.8815/C-75/25/E8 dated 15.02.2016.
3. Condition No.70 of the General Terms and Conditions 'IAFW-2249' contains an arbitration agreement between the parties.

4. As certain disputes have arisen under the agreement, the petitioner invoked the arbitration clause vide its notice dated 08.06.2017 calling upon the respondent to appoint an Arbitrator for adjudication of the disputes. The respondent have not acted upon the said request, therefore, the present petition has been filed by the petitioner praying for appointment of a Sole Arbitrator.

5. The respondent has filed its reply. As far as the appointment of arbitrator is concerned, it is contended that in terms of sub-para 2 of General Condition No.70 and the first Proviso thereto reference to arbitration cannot be made at this stage inasmuch as the work is not complete and there is a case of abandonment of the work.

6. To consider the above submission, I first quote relevant paragraphs from Condition No.70 of the General Conditions:

***“70. Arbitration.-** All disputes, between the parties to the Contract(other than those for which the decision of the C.W.E. or any other person is by the Contract expressed to be final and binding) shall, after written notice by either party to the Contract to the other of them, be referred to the sole arbitration of an Engineer officer to be appointed by the authority mentioned in the tender documents.*

Unless both parties agree in writing such reference shall not take place until after the completion or alleged completion of the Work or termination or determination of the Contract under Condition Nos. 55, 56 and 57 thereof.

Provided that in the event of abandonment of the Works or cancellation of the Contract under

Condition Nos. 52, 53 or 54 hereof, such reference shall not take place until alternative arrangements have been finalized by the Government to get the Works completed by or through any other Contractor or Contractors or Agency or Agencies.”

7. A reading of the above clause would show that reference to arbitration cannot be made till at least “alleged completion of work”. In the present case in paragraphs 22 and 23 of the petition, the petitioner making reference to its letters dated 15.05.2017 and 25.05.2017 alleges that the work has already been completed and quarters have been handed over to the respondent who has further handed them over to the users of the same. Paragraphs No.22 and 23 are quoted herein below:

“22. It is submitted that despite of numerous difficulties faced by the Petitioner in completing the Work could complete the Work on site by 15.05.2017 and the said fact was intimated to the Respondents also further requested vide Letter dated 25.05.2017 to provide the Completion Certificate along with the cleared Final Bill & Final RAR of the executed work. The Copy of Letter dated 15.05.2017 ,25.05.2017 is annexed herewith as "ANNEXURE Pl6(Colly).

23. It is humbly submitted that the despite of the huge losses the respondent work was completed in all aspects and the site was handed over back to the respondent furthermore the quarters were handed over to the users by the Respondent in all respects without any discrepancies pointed out by the users.

The Photographs exhibiting the completed work at the site is annexed herein as "ANNEXURE P 17".

8. In view of the submissions made in paragraphs No.22 and 23, the bar contained in sub para 2 of General Condition No.70 would not apply. The same view has been taken by this Court in its order dated 21.09.2017 passed in ***Prem Construction Company v. Union of India & Ors.***, Arb. P. 426/2017.

9. Learned counsel for the respondent further contends that vide its letter dated 31.01.2017 the respondent has pointed certain defects in the work carried out by the petitioner and same have not been rectified and, therefore, the work cannot be said to have been completed and, should be treated as abandoned. This however, in my view cannot stall the appointment of an Arbitrator but shall be one of the disputes to be adjudicated by the Arbitrator.

10. In view of the above, the present petition is allowed. I hereby direct that the parties shall appear before the Delhi International Arbitration Centre (DIAC) who shall appoint a Sole Arbitrator to adjudicate the disputes between the parties. The arbitration and the fee shall be governed by the rules of the DIAC.

11. The parties to appear before DIAC on 30th November, 2017 at 2:00 PM.

12. With the above directions, the petition is disposed of.

Dasti.

NAVIN CHAWLA, J

NOVEMBER 10, 2017/vp