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

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Judgment delivered on: 30.08.2017

+ ARB.P. 486/2017

M/S CHAUDHARY & CO.

..... Petitioner

versus

UNION OF INDIA THROUGH GENERAL MANAGER,
NORTHERN RAILWAY & ANR.

..... Respondents

Advocates who appeared in this case:

For the Petitioner : Mr. Amit Dubey, Adv.

For the Respondents : Mr.J.K. Singh, Adv.

CORAM:-

HON'BLE MR JUSTICE SANJEEV SACHDEVA

JUDGMENT

SANJEEV SACHDEVA, J. (ORAL)

1. The petitioner by way of the present petition under Section 11 of the Arbitration & Conciliation Act, 1996 (hereinafter referred to as 'the Act') seek appointment of an independent Sole Arbitrator.
2. The petitioner was awarded a contract for providing of LHS in lieu of L-Xing no. C-20, C-21 & C-22 on Jind- Panipat section in the section of SSE (W)/Spl. Panipat.
3. As per the petitioners, they have executed the contract and

certain bills are pending and the respondents have made certain recoveries which the petitioners are disputing leading to the petitioners invoking the arbitration clause.

4. The relevant clause of arbitration reads as under:-

“64.(1) Demand For Arbitration :

64.(1) (i) In the event of any dispute or difference between the parties hereto as to the construction or operation of this contract, or the respective rights and liabilities of the parties on any matter in question, dispute or difference on any account or as to the withholding by the Railway of any certificate to which the contractor may claim to be entitled to, or if the Railway fails to make a decision within 120 days, then and in any such case, but except in any of the “excepted matters” referred to in Clause 63 of these Conditions, the contractor, after 120 days but within 180 days of his presenting his final claim on disputed matters shall demand in writing that the dispute or difference be referred to arbitration.

64.(1) (ii) The demand for arbitration shall specify the matters which are in question, or subject of the dispute or difference as also the amount of claim item-wise. Only such dispute(s) or difference(s) in respect of which the demand has been made, together with counter claims or set off, given by the Railway, shall be referred to arbitration and other matters shall not be included in the reference.

64.(1) (iii) (a) The Arbitration proceedings shall be assumed to have commenced from the day, a written and valid demand for arbitration is received by the Railway.

(b) The claimant shall submit his claim stating the facts supporting the claims alongwith all the relevant documents and the relief or remedy sought against each claim within a period of 30 days from the date of appointment of the Arbitral Tribunal.

(c) The Railway shall submit its defence statement and counter claim(s), if any, within a period of 60 days of receipt of copy of claims from Tribunal thereafter, unless otherwise extension has been granted by Tribunal.

(d) Place of Arbitration : The place of arbitration would be within the geographical limits of the Division of the Railway where the cause of action arose or the Headquarters of the concerned Railway or any other place with the written consent of both the parties.

64.(1) (iv) No new claim shall be added during proceedings by either party. However, a party may amend or supplement the original claim or defence thereof during the course of arbitration proceedings subject to acceptance by Tribunal having due regard to the delay in making it.

64.(1) (v) If the contractor(s) does/do not prefer his/their specific and final claims in writing, within a period of 90 days of receiving the intimation from the Railways that the final bill is ready for payment, he/they will be deemed to have waived his/their claim(s) and the Railway shall be discharged and released of all liabilities under the contract in respect of these claims.

64.(2) Obligation During Pendency Of Arbitration : Work under the contract shall, unless otherwise directed by the Engineer, continue during the arbitration proceedings, and no payment due or payable by the Railway shall be withheld on account of such proceedings, provided, however, it shall be open for

Arbitral Tribunal to consider and decide whether or not such work should continue during arbitration proceedings.

64.(3) Appointment of Arbitrator :

64.(3) (a)(i) In cases where the total value of all claims in question added together does not exceed Rs. 25,00,000 (Rupees twenty five lakh only), the Arbitral Tribunal shall consist of a Sole Arbitrator who shall be a Gazetted Officer of Railway not below JA Grade, nominated by the General Manager. The sole arbitrator shall be appointed within 60 days from the day when a written and valid demand for arbitration is received by GM.

{Authority : Railway Board's letter no. 2012/CE-I/CT/ARB./24, Dated 22.10./05.11.2013}

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5. The arbitration clause was invoked by letter dated 10.04.2017.
6. Learned counsel for the petitioners submits that the arbitration clause stipulates that a serving officer of the Railway is to be appointed as a Sole Arbitrator. However, the said portion of the clause would be violative of Section 12(5) of the Act.
7. Learned counsel for the respondents, without prejudice, submits that he has no objection to appointment of a Sole Arbitrator.
8. Learned Counsel for the Respondent has shared with learned Counsel for the petitioner, a list of Arbitrators empanelled by the Respondent.

9. Parties are agreeable that Mr. R.P. Gupta, Additional Member (Works) (Retired), be appointed as the Sole Arbitrator for adjudicating the disputes between the parties.

10. In view of the above, Mr. R.P. Gupta, Additional Member (Works) (Retired), C-12, G.K. Enclave-I, New Delhi-110018 is appointed as the Sole Arbitrator to adjudicate the disputes between the parties. This is subject to the Arbitrator making the necessary disclosure under Section 12 of the Act of not being ineligible under Section 12(5) of the Act.

11. The Arbitrator shall adjudicate the claims of the petitioners and the counter claims, if any of the respondents.

12. The fee of the Arbitrator shall be as per the fourth schedule under the Arbitration and Conciliation Act, 1996.

13. The parties are at liberty to approach the learned Arbitrator for elucidating the necessary disclosures and for further proceedings.

14. The petition is accordingly disposed of.

15. Order *Dasti* under signatures of the Court Master.

SANJEEV SACHDEVA, J

AUGUST 30, 2017
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