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

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Judgment delivered on: 21.09.2017

+ ARB.P. 469/2017

APEX BUILDSYS LIMITED (PREVIOUSLY KNOWN AS
M/S ERA BUILDSYS Petitioner

versus

PRIME HITECH INFRASTRUCTURE LIMITED Respondent

Advocates who appeared in this case:

For the Petitioner : Mr. Lovkesh Sawhney, Advocate

For the Respondent : Mr. Amit Kumar, Advocate

**CORAM:-
HON'BLE MR JUSTICE SANJEEV SACHDEVA**

**JUDGMENT
21.09.2017**

SANJEEV SACHDEVA, J. (ORAL)

1. The petitioner has filed this petition under Section 11 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as the Act) seeking appointment of a sole arbitrator.

2. Petitioner had submitted an offer for the purposes of supply of materials and erection, for erection of pre-engineered building for Industrial Building Unit at SEZ Naidupeta Nellore, Andhra Pradesh.

3. A Letter of Intent dated 11.04.2011 was issued to the petitioner. Consequent thereto, two work orders dated 12.04.2011 were issued.
4. As per the petitioner, the petitioner has not been fully paid for the works executed.
5. The arbitration clause, as contained in the agreement between the parties, reads as under:-

“20. DISPUTES AND ARBITRATION

Any difference, dispute, controversy or claim (dispute) which may arise between the Parties hereto out of/ in relation to or in connection with this agreement or as to their Rights, duties or liabilities here under other than a dispute for which provision is specifically made in this contract, shall be settled by the parties by mutual negotiation and agreement, if for any reason such dispute cannot be resolved amicably by the parties hereto within 15 calendar days of dispute being notified by one party or other, the same can be settled by way of arbitration proceedings by three arbitrators, one to be nominated by each of the Supplier and PHIL and the third to be appointed by the two arbitrators so appointed and who shall act as a chairman of the tribunal. The arbitration proceedings shall be held in accordance with the Arbitration and conciliation Act 1996 or any subsequent enactment and amendment thereto. The venue of arbitration shall be New Delhi. Cost of arbitration will be shared equally between the employer and the supplier.

During the pendency of arbitration proceedings, the Supplier shall not stop working. The Supplier shall endeavor to finish the work within the stipulated time.”

6. The petitioner has invoked the arbitration by letter dated 01.02.2017.

7. Learned counsel for the respondent submits that without prejudice to his plea of limitation left to be raised and considered by the Arbitral Tribunal, he has no objection to the appointment of Arbitrator.

8. Learned counsel for the respondent submits that though the Clause stipulates three arbitrators, however, he has received instructions of his client to consent for appointment of a Sole Arbitrator keeping in view the quantum of the claim.

9. Accordingly, with consent of parties, Mr. R. V Easwar, former Judge of this Court, (Mobile No. 9560899997) is appointed as the sole arbitrator to adjudicate the disputes between the parties subject to the arbitrator making the necessary disclosures under Section 12 of the Act of not being ineligible under Section 12(5) of the Act.

10. The arbitrator shall adjudicate the claims of the petitioner and counter claims, if any, of the respondent.

11. The fee of the arbitrator shall be fixed by the arbitrator in consultation with learned counsel for the parties.

12. Parties are at liberty to approach the Arbitrator for elucidating the necessary disclosures and for further proceedings.

13. Petition is allowed in the above terms.

14. It is clarified that this Court has neither examined nor commented upon the issue of limitation raised by the learned counsel for the respondent. The said issue is left open to be considered and decided by the learned Arbitrator, if so raised.

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

SEPTEMBER 21, 2017
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SANJEEV SACHDEVA, J

