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

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Judgment delivered on: 26.09.2017

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ARB.P. 492/2017

SH. SHASHI KANT PROP. OF MANI BUILDER Petitioner

versus

ERA INFRA ENGINEERING LIMITED THROUGH ITS
MANAGING DIRECTOR Respondent

Advocates who appeared in this case:

For the Petitioner	:	Ms Perna Sinha and Mr Hasib-ur-Rehman
For the Respondent	:	Mr Manoj Singh, Mr Palash Taing and Mr Rahul Pandey

CORAM:-

HON'BLE MR JUSTICE SANJEEV SACHDEVA

JUDGMENT

26.09.2017

SANJEEV SACHDEVA, J. (ORAL)

1. The petitioner, by this petition under Section 11 of the Arbitration & Conciliation Act, 1996 (hereinafter referred to as 'the Act'), seeks appointment of a Sole Arbitrator.
2. The petitioner was awarded a Contract for a project at the work site of TF005, Haridwar Highway Project (SH: drain work). Work orders were issued to the petitioner.
3. As per the petitioner, during execution of the work, disputes arose, *inter alia*, with regard to the payment for the works executed, leading to the petitioner invoking the arbitration clause.

4. The Arbitration Clause, as contained in the Work Order and agreed to between the parties reads as under:-

“This work order and all questions of its interpretation shall be governed in all respects solely and exclusively by the laws of India without regard to conflict of laws principles. The courts of Delhi shall have jurisdiction in respect of all matters relating thereto. Each of the parties consents to the exclusive jurisdiction of such courts.

A Dispute shall be deemed to arise when one party serves on the other party notice stating the nature of the dispute (a ‘Notice of Dispute’) which arises here to agree that they will use all reasonable efforts to resolve between themselves, any Disputes through negotiations. Any Dispute and differences whatsoever arising under or in connection with this work order (including the enforcement of the rights, duties, powers and obligations conferred herein) which cannot be settled by Parties through negotiations, after the period of thirty (30) business days from the service of the Notice of Dispute, shall be finally referred to the Managing Director of the company, who will appoint a Sole Arbitrator. All such arbitration proceeding shall be held in accordance with the Arbitration and Conciliation Act, 1996.”

5. Learned counsel for the petitioner submits that though the arbitration clause stipulates that the Sole Arbitrator shall be the Managing Director of the respondent – Company, however, in view of the judgment of the Supreme Court in **TRF LIMITED VERSUS ENERGO ENGINEERING PROJECTS LIMITED**, (2017) 8 SCC 377, the Managing Director is disqualified under Section 12 of the Act, as amended by the Arbitration & Conciliation (Amendment) Act, 2015, to act as the

Arbitrator. She prays that a Sole Arbitrator be appointed by court.

6. Learned counsel for the respondent submits that without prejudice to the rights and contentions of the respondent and the defence to the claims raised by the petitioner, he has no objection if a Sole Arbitrator could be appointed.

7. Accordingly, with the consent of parties, Ms Bimla Makin, former District Judge (Mobile # 9910384624) is appointed as the Sole Arbitrator, subject to the Arbitrator making necessary disclosures under Section 12 of the Act, of not being ineligible under Section 12(5) of the Act.

8. The Arbitrator shall adjudicate the claims of the petitioner and the counter-claims, if any, of the respondent.

9. The fee of the Arbitrator shall be in accordance with Schedule 4 of the Act.

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

11. The petition is accordingly disposed of.

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

SANJEEV SACHDEVA, J

SEPTEMBER 26, 2017/سن