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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ O.M.P. (T) (COMM.) 14/2018 & IA No. 2344-2345/2018
UNION OF INDIA Petitioner
Through: Dr.Kumar Jwala, Adv.

versus

SURENDRA KUMAR BANSAL & ANR. Respondents
Through: Mr.Shrey Sharawat, Adv.

CORAM:
HON'BLE MR. JUSTICE NAVIN CHAWLA
ORDER
% **19.02.2018**

IA No. 2345/2018 (Exemption)

Allowed, subject to all just exceptions.

IA No. 2344 & O.M.P. (T) (COMM.) 14/2018

This petition under Section 14 read with Section 15 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as the 'Act') has been filed by the petitioner seeking termination of the mandate of the Sole Arbitrator appointed by this Court vide order dated 19.05.2017 in Arb.P. 242/2016.

The ground of challenge to the Arbitrator is that in terms of the Arbitration Agreement contained in Clause 70 of the General Conditions of Contract, only a Serving Officer of the petitioner having degree in Engineering or equivalent or having passed final / direct final Examination of sub-Division II of Institution of Surveyor (India) recognised by the Government of India could have been appointed as a Sole Arbitrator. It is submitted that as the Sole Arbitrator appointed by this Court does not

possess the said qualification, the Arbitrator is *dejure* incapable of proceeding with the Arbitration proceedings. The petitioner placed reliance on Section 12(3)(b) of the Act in support of its contention.

As noted above, the Sole Arbitrator was appointed by this Court on a petition filed under Section 11(6) of the Act by the respondent. Though it may be correct that while making an appointment under Section 11 of the Act, the Court is generally guided by the qualification of the Arbitrator prescribed in the Arbitration Agreement, however, the same is not a sole determinative factor. Once the Appointing Authority has forfeited its right to appoint an Arbitrator due to its inaction, the Court is empowered to appoint a Sole Arbitrator even though such person may not possess the qualification prescribed for the Arbitrator in the Arbitration Agreement. Reference in this regard may be made to Union of India vs. Bharat Battery Manufacturing Co. (P) Ltd. (2007) 7 SCC 684; Deep Trading Company vs. Indian Oil Corporation & Ors. (2013) 4 SCC 35.

In view of the above, I find no merit in the present petition and the same is dismissed with no order as to cost.

NAVIN CHAWLA, J

FEBRUARY 19, 2018/rv