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

+ **ARB.P. 128/2018**

KIRAN INFRA ENGINEERS LTD Petitioner

Through Mr Sddharth Sharma, Ms Shruti Arora,
Advocates.

versus

NORTHERN RAILWAYS THROUGH GENERAL
MANAGER

..... Respondent

Through Mr Anil Kumar, Dy. CSTE/Const.NR in
person.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER

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02.05.2018

1. The petitioner has filed the present petition under Section 11 of the Arbitration and Conciliation Act, 1996, inter alia, praying that an arbitrator be appointed to adjudicate the disputes that have arisen in connection with the contract dated 25.07.2013. The said contract includes an arbitration clause which is set out as under:-

“40.1 ARBITRATION

- (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, shall be referred by the contractor to the GM and the GM shall be within 120 days after receipt

of the contractor's representation make and notify decisions on all matters referred to by the contractor in writing or if the OM fails to make a decision within 120 days, then and in any such case, but except in any of the 'excepted matters' (matters not arbitrable and decision of the Rly authority, thereon shall be final and binding on the contractor, provided further that 'excepted matters' shall stand specifically excluded from the preview of the arbitration clause), 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."

2. The petitioner had, by a letter dated 24.02.2016, made a demand of ₹17,92,499/- on account of certain price variation bills (seven in number). Since the said claims were not settled by the General Manager, the petitioner sent a letter dated 17.05.2016 invoking the arbitration clause, *inter alia*, requesting that the amount be released failing which the matter be referred to arbitration. Thereafter, the petitioner issued a legal notice dated 24.10.2016, *inter alia*, calling upon the respondent to settle the price variation bills aggregating a sum of ₹26,18,414/-. In addition, the petitioner also demanded release of retention money and indicated other points of dispute. The petitioner demanded that the said amounts be paid within a period of 30 days failing which to appoint an arbitrator to resolve the same. The relevant points of dispute as indicated in the said notice are set out below:-

“POINTS OF DISPUTE

1.	Release of payment of PVC bills submitted for payment	2618414.00
2	Release of retainision amount deducted for	3016702.00

	completion of work from the admitted bills @ 10%	
3.	Release of bank guarantee	3680400.00 100000.00
4.	Release of SD deducted from running bills	3185180.00
5.	Release of FDR deposit SD FDR No. 049626 dated 18.3.2013	495220.00
	Total	13095916.00

3. The respondent responded to the said letter by a letter dated 29.11.2016 commenting on the contents of the above letter. The respondent also called upon the petitioner to correct the price variation bills so that the request for arbitration could be processed.

4. The petitioner responded to the said letter on 02.02.2017 disputing that the bills were required to be corrected in any manner.

5. It is apparent from the above that although the respondent has not accepted the claims as raised by the petitioner, there is no dispute as to the existence of an arbitration clause. Further, the petitioner has also complied with the conditions of calling upon the General Manager of the respondent to resolve the disputes. Further, it is also apparent that the claims raised by the petitioner have not been resolved by the General Manager.

6. In view of the above, the arbitral tribunal is required to be constituted. Mr Anil Kumar, Deputy General Manager is present in Court and states that the respondent would have no objection if the arbitral tribunal is constituted under the Rules of Delhi International Arbitration Centre (DIAC).

7. Accordingly, it is directed that a sole arbitrator be appointed by the DIAC for adjudication of the disputes that fall within the scope of the aforementioned arbitration clause. The arbitration shall be conducted under

the aegis of DIAC and in accordance with its Rules.

8. The parties are directed to appear before the Co-ordinator, DIAC on 18.05.2018 at 11:00 AM for further proceedings.
9. It is clarified that all rights and contentions of the parties are reserved.
10. The petition is disposed of.
11. Order *dasti*.

VIBHU BAKHRU, J

MAY 02, 2018

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