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IN THE HIGH COURT OF DELHI AT NEW DELHI

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ARB.P. 269/2018

DECOR INDIA

..... Petitioner

Through: Mr.Navneet Duggar, Mr.Manoj Kumar,
Advs.

Versus

UNION OF INDIA & ANR.

..... Respondents

Through: Mr.Anil Panwar, CGSC with
Ms.Anoosha S.Panwar, Mr.Abhimanyu Chauhan,
Advs.

CORAM:

HON'BLE MR. JUSTICE NAVIN CHAWLA

ORDER

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18.07.2018

This petition under Section 11 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as the 'Act') has been filed by the petitioner seeking appointment of an Arbitrator for adjudicating the disputes that have arisen between the parties in relation to the Agreement dated 23rd March, 2013 whereby the respondents had awarded the work of Construction of Lecture Theatre cum Laboratory Complex at IIT Delhi SH: Interior works of auditorium and Lecture Theatres for acoustical paneling and Gypsum board lining of steel girders in favour of the petitioner.

The said Agreement contains an Arbitration Agreement between the parties in form of Clause 25 thereof, as amended by the Director General on 23.05.2011 vide notification No. DG/CON/255, reproduced herein below:-

<i>Clause 25 (i)</i>	<i>If the contractor considers</i>	<i>If the contractor considers any work</i>
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	any work demanded of him to be outside the requirements of the contract, or disputes any drawings, record or decision given in writing by the Engineer-in-Charge on any matter in connection with or arising out of the contract or carrying out of the work, to be unacceptable, he shall promptly within 15 days request the Superintending Engineer in writing for written instruction or decision. Thereupon, the Superintending Engineer shall give his written instructions or decision within a period of one month from the receipt of the contractor's letter.	demand of him to be outside the requirements of the contract, or disputes any drawings, record or decision given in writing by the Engineer-in-Charge on any matter in connection with or arising out of the contract or carrying out of the work, to be unacceptable, he shall promptly within 15 days request the Superintending Engineer in writing for written instruction or decision. Thereupon, the Superintending Engineer shall give his written instructions or decision within a period of one month from the receipt of the contractor's letter.
	If the Superintending Engineer fails to give his instructions or decision in writing within the aforesaid period or if the	If the Superintending Engineer fails to give his instructions or decision in writing within the aforesaid period or if the

	contractor is dissatisfied with the instructions or decision of the Superintending Engineer, the contractor may, within 15 days of the receipt of Superintending Engineer's decision, appeal to the Chief Engineer who shall afford an opportunity to the contractor to be heard, if the latter so desires, and to offer evidence in support of his appeal. The Chief Engineer shall give his decision within 30 days of receipt of contractor's appeal. If the contractor is dissatisfied with this decision, the contractor shall within a period of 30 days from receipt of the decision, give notice to the Chief Engineer for appointment of arbitrator on prescribed proforma as per Appendix XV, failing which the said decision shall be final	contractor is dissatisfied with the instructions or decision of the Superintending Engineer, the contractor may, within 15 days of the receipt of Superintending Engineer's decision, appeal to the Chief Engineer who shall afford an opportunity to the contractor to be heard, if the latter so desires, and to offer evidence in support of his appeal. The Chief Engineer shall give his decision within 30 days of receipt of contractor's appeal. If the contractor is dissatisfied with the decision of the Chief Engineer, the contractor may within 30 days from the receipt of the Chief Engineer decision, appeal before the Dispute Redressal Committee (DRC) along with a list of disputes with amounts claimed in respect of each such dispute and
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	<i>binding and conclusive and not referable to adjudication by the arbitrator.</i>	<i>giving reference to the rejection of his disputes by the Chief Engineer. The Dispute Redressal Committee (DRC) shall give his decision within a period of 90 days from the receipt of Contractor's appeal. The constitution of Dispute Redressal Committee (DRC) shall be as indicated in Schedule 'F'. If the Dispute Redressal Committee (DRC) fails to give his decision within the aforesaid period or any party is dissatisfied with the decision of Dispute Redressal Committee (DRC), then either party may within a period of 30 days from the receipt of the decision of Dispute Redressal Committee (DRC), give notice to the Chief Engineer for appointment of arbitrator on prescribed proforma as per Appendix XV, failing which the said decision shall be final</i>
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		<i>binding and conclusive and not referable to adjudication by the arbitrator. It is a term of contract that each party invoking arbitration must exhaust the aforesaid mechanism of settlement of claims/disputes prior to invoking arbitration.</i>
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Disputes having arisen between the parties, the petitioner invoked the Arbitration Agreement vide its letter dated 14th December, 2017. The said request was, however, turned down by the Chief Project Manager on the ground that as the petitioner had failed to apply to the Dispute Redressal Committee (DRC) within 30 days of the decision of the Chief Engineer and its application to the DRC was time barred, the petitioner was not entitled to seek appointment of an Arbitrator. The petitioner, therefore, filed the present petition. Counsel for the respondents submits that the petitioner is not entitled to invoke the Arbitration Agreement as the petitioner had failed to approach the DRC within the time prescribed under Clause 25 of the Agreement. He submits that due to such failure of the petitioner, the petitioner has lost its right to agitate its claim. In this regard, he places reliance on the judgment of this Court in ***United India Insurance Co. Ltd. vs. Karam Chand Goel*** MANU/DE/4493/2009 and of the Supreme Court in ***National Insurance Co. Ltd. vs. Sujir***

Ganesh Nayak & Co. & Anr. MANU/SC/0491/1997.

I do not find any force in the submission made by the counsel for the respondents. Section 28 of the Indian Contract Act, 1872 declares any condition in the Agreement which extinguishes the right of any party thereto or discharges any party thereto from any liability, under or in respect of any contract on the expiry of a specified period, so as to restrict the right of such party from enforcing its rights, as void. This Court has considered the effect of the amendment made to Section 28 of the Contract Act in the judgment of ***Pandit Construction Company vs. Delhi Development Authority*** 2007 (3) ARBLR 205 Delhi and has negated similar argument of the respondent therein.

In view of the above, I see no impediment in appointing a Sole Arbitrator for adjudicating the disputes that have arisen between the parties in relation to the abovementioned Agreement. I accordingly appoint **Ms.Meera Bhatia**, Advocate, R/o D-200, Defence Colony, New Delhi-110024, Mobile-9810076748 as an Arbitrator.

The Arbitrator shall give her disclosure statement under Section 12 of the Act before proceeding with the reference.

The petition is allowed in the above terms with no order as to costs.

Dasti.

NAVIN CHAWLA, J

JULY 18, 2018
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