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

+ **ARB.P. 237/2018**

M/S VASCON ENGINEERS LTD

..... Petitioner

Through: Mr Arvind Sharma and Ms Mrinalini
Khatri, Advocates.

versus

DIRECTOR GENERAL (MAP)

..... Respondent

Through: Mr Kirtiman Singh, CGSC.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER

% 25.05.2018

1. The petitioner has filed the present petition under Section 11(5) of the Arbitration and Conciliation Act, 1996 (hereafter 'the Act'), *inter alia*, praying that an arbitrator be appointed to adjudicate the disputes that have arisen between the parties in relation to a contract for construction of dwelling units including allied external services at Aundh Kirkee, Pune.
2. The terms of the contract include an arbitration clause, which is set out below:-

"60. Arbitration:

All disputes, between the parties to the contract (other than those for which the decision of the DG MAP/CCE MAP or any other person is by the contract expressed to be final and binding) shall, after written notice by either party to the Contract to the other of them, be referred to the sole arbitration of serving officer having degree in Engineering or equivalent or having passed Final/Direct Final Examination of Sub Division II of Institution of

Surveyors (India) recognised by the Govt. of India to be appointed by the Engineer-in-Chief, Army Headquarters, New Delhi or in his absence, the officer officiating as Engineer-in-Chief or Director General of Works if specifically delegated in writing by Engineer-in-Chief, Army Headquarters, New Delhi whose decision shall be final, conclusive and binding. The Arbitration shall be governed by Arbitration and Conciliation Act, 1996.

Unless both parties agree in writing, such reference shall not take place until after the completion or alleged completion of the Works or termination or determination of the Contract under Condition Nos.48 and 49 hereof.

Provided that in the event of abandonment of the works or cancellation of the Contract under Condition Nos.45, 46 or 47 hereof, such reference shall not take place until alternative arrangements have been finalized by the Government to get the works completed by or through any other Contractor or Contractors or Agency or Agencies. Provided always that commencement or continuance of any arbitration proceeding hereunder or otherwise shall not in any manner militate against the Government's right of recovery from the contractor as provided in condition 56 hereof.

If the Arbitrator so appointed resigns his appointment or vacates his office or is unable or unshalling to act due to any reason whatsoever, the authority appointing him may appoint a new Arbitrator to act in his place.

The Arbitrator shall be deemed to have entered on the reference on the date he issues notice to both the parties, asking them to submit to him their statement of case and pleading in defense.

The Arbitrator may proceed with the arbitration, exparte, if either party, inspite of a notice from the Arbitrator, fails to take part in the proceedings.

The Arbitrator shall give his reasoned award in writing on all matters referred to him and shall indicate his

findings, along-with sums awarded, separately each individual item of dispute.

The venue of arbitration shall be such place or places as may be fixed by the Arbitrator in his discretion

The award of the Arbitrator shall be final and binding on both the parties to the Contract.”

3. Mr Kirtiman Singh, the learned counsel for the respondent does not dispute the arbitration clause or that it had been validly invoked. He emphatically states that the respondent has no objection if an independent arbitrator is appointed to adjudicate the disputes between the parties.

4. Since, there is no dispute as to the existence of an arbitration clause, it is necessary that an arbitrator be appointed to adjudicate the disputes that have arisen between the parties in relation to the contract. At the request of the learned counsel for the parties, Justice Badar Durrez Ahmed, former Chief Justice of Jammu and Kashmir High Court (Mobile No. 7042205786), is appointed as a sole arbitrator to adjudicate the disputes between the parties, which fall within the scope of the arbitration clause as set out above. This is subject to the arbitrator making the necessary disclosure under Section 12 of the Act and not being ineligible under Section 12(5) of the Act. The arbitrator shall fix the arbitral fees in consultation with the learned counsel for the parties and having regard to fourth schedule to the Act.

5. The petition is disposed of.

6. Order *dasti*.

VIBHU BAKHRU, J

MAY 25, 2018/MK