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

+ ARB.P. 366/2018

SUSHIL KUMAR JAIN

..... Petitioner

Through: Mr.Avinash Tivedi & Mr.Umesh
Kashyap, Advs.

versus

I&FC DEPARTMENT

..... Respondent

Through: Mr.Gautam Narayan, ASC for
GNCTD with Mr.Abhinav Goyal,
Adv. alongwith Mr.Shammi, AE,
I&FC Department.

CORAM:

HON'BLE MR. JUSTICE NAVIN CHAWLA

ORDER

% **30.08.2018**

This petition has been filed under Section 11 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as the 'Act') seeking appointment of an Arbitrator for adjudicating the disputes that have arisen between the parties in relation to the work awarded for Demolishing and reconstruction of double storied Chaupal at Village Bharthal in N.G. Block of Bijwasan Constituency vide Letter of Acceptance dated 19.07.2013 and Letter of Intent dated 29.07.2013. The Agreement between the parties contains an Arbitration Agreement in form of Clause 25 of the General Conditions of Contract (GCC).

Disputes having arisen between the parties, the petitioner invoked the procedure prescribed under Clause 25 of the GCC vide demand notice dated 31.08.2017 addressed to the Executive Engineer of the respondent. Having failed to receive any response, the petitioner vide letter dated 05.10.2017

called upon the Superintendent Engineer of the respondent to decide the claims of the petitioner. As no response was received even to this request, the petitioner vide its letter dated 21.11.2017 called upon the Chief Engineer to appoint an Arbitrator. No response was received even to this letter, however, the Executive Engineer vide its letter dated 25.01.2018 rejected the claims of the petitioner.

Notice of this petition was issued to the respondent on 17.05.2018 and time for filing of the reply was granted. No reply was filed, however, on 19.07.2018 the learned counsel appearing for the respondent submitted that there is a possibility of an amicable settlement of the disputes.

Today the learned counsel for the respondent has handed over a letter dated 23.07.2018 by the Executive Engineer of the respondent to the petitioner calling upon the petitioner to submit the final bill as per the last date of measurement and date of joint measurement i.e. 02.03.2016 and 04.09.2017 respectively.

Learned counsel for the petitioner submits that the claim of the petitioner relates even to the refund of earnest money and the Performance Guarantee in the shape of a fixed deposit receipt. He further submits that the respondent has already refuted the claims of the petitioner and therefore, there is no chance of a settlement being arrived at even if the petitioner is to send this bill as called for by the respondent. He submits that the petitioner has already waited for a long period and the respondent cannot be allowed to restart the process by now calling upon the petitioner to submit the final bill.

In view of the above, as the existence of the Arbitration Agreement and due invocation thereof by the petitioner are not denied by the respondent, I see no impediment in appointing a Sole Arbitrator for

adjudicating the disputes that have arisen between the parties in relation to the abovementioned award of work to the petitioner.

I refer the parties to the Delhi International Arbitration and Conciliation Centre (DIAC), who shall appoint a Sole Arbitrator for adjudicating the disputes that have arisen between the parties. All contentions of the respondent shall remain open before the Arbitrator so appointed. The arbitration and the fee shall be governed by the DIAC rules.

The petition is disposed of in the above terms and with no order as to cost.

Dasti.

NAVIN CHAWLA, J

AUGUST 30, 2018/rv