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

+ **ARB.P. 302/2018**

THERMAX LIMITED

..... Petitioner

Through Mr R. Sudhinder, Ms Prerana Amitabh,
Mr Anurag Tripathi, Advocates.

Versus

FERNAS CONSTRUCTION INDIA PVT. LTD. Respondent
Through Mr N. Prashant Kumar Nair, Advocate.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER

% **07.05.2018**

1. The petitioner has filed the present petition under Section 11 (6) of the Arbitration and Conciliation Act, 1996 (hereafter 'the Act'), *inter alia*, praying as under :-

“Pass an order appointing independent and impartial co-arbitrator, the same having not been appointed by the Respondent, for and on behalf of Respondent in terms of the agreement between the parties as also as per Arbitration and Conciliation Act, 1996, as amended upto date;”

2. The petitioner seeks appointment of an arbitrator to be nominated by the respondent in terms of the arbitration clause for constitution of the arbitral tribunal for adjudicating the disputes that have arisen in relation to the agreement entered into by the parties. The General Conditions of Contract (GCC), which are an integral part of the agreement between the parties includes an arbitration clause that reads as under:-

“1.3.2 Arbitration

Except as otherwise provided elsewhere in the contract if any dispute, difference, question or disagreement arises between the parties hereto or their respective representatives or assignees, at any time in connection with construction, meaning, operation, effect, interpretation or out of the contract or breach thereof the same shall be decided by an Arbitral Tribunal consisting of three Arbitrators. Each party shall appoint one Arbitrator and the Arbitrators so appointed shall appoint the third Arbitrator who will act as Presiding Arbitrator.

In case a party fails to appoint an arbitrator within 30 days from the receipt of the request to do so by the other party or the two Arbitrators so appointed fail to agree on the appointment of third Arbitrator within 30 days from the date of their appointment, upon request of a party, the Chief Justice of India or any person or institution designated by him (in case of International Commercial Arbitration) shall appoint the Arbitrators/ Presiding Arbitrator. In case of domestic contracts, the Chief Justice of the High Court or any person or institution designated by him within whose jurisdiction the subject contract has been made, shall appoint the arbitrator/ Presiding Arbitrator upon request of one of the parties.

If any of the Arbitrators so appointed dies, resigns, incapacitated or withdraws for any reason from the proceedings, it shall be lawful for the concerned party/arbitrators to appoint another person in his place in the same manner as aforesaid. Such person shall proceed with the reference from the stage where his predecessor had left if both parties consent for the same, otherwise, he shall proceed de novo.

It is a term of the contract that the party invoking arbitration shall specify all disputes to be referred to arbitration at the time of invocation of arbitration and not thereafter.

It is also a term of the contract that neither party to the contract

shall be entitled for any ante-lite (pre-reference) or pendente-lite interest on the amount of the award.

The Arbitral Tribunal shall give reasoned award and the same shall be final, conclusive and binding on the parties.

The venue of the arbitration shall be the place from where the contract has been made.

The fees of the arbitrators shall be borne by the parties nominating them and the fee of the Presiding Arbitrator, costs and other expenses incidental to the arbitration proceedings shall be borne equally by the parties.

Subject to as aforesaid the provisions of the Arbitration and Conciliation Act, 1996 and any statutory modifications or re-enactment in lieu thereof shall apply to the arbitration proceedings under this clause.”

3. The learned counsel appearing for the respondent does not dispute the existence of the arbitration clause or that the same had been invoked by the petitioner. However, the learned counsel for the parties request that instead of appointing an arbitrator in place of the arbitrator to be nominated by the respondent, a sole arbitrator may be appointed to adjudicate the disputes between the parties.
4. In view of the joint request made by the learned counsel for the parties, Justice (Retired) Indermeet Kaur (Mobile No. 9910384614) is appointed as the sole arbitrator to adjudicate the disputes between the parties falling within the scope of the arbitration clause. 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.
5. The arbitrator shall fix the arbitral fees in consultation with the learned counsel for the parties and having regard to Schedule IV of the Act.

6. The parties are at liberty to approach the arbitrator for further proceedings.
7. The petition is disposed of in the above terms.

VIBHU BAKHRU, J

MAY 07, 2018
pkv