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

+ **ARB.P. 298/2018**

JKM INFRA PROJECTS LTD.

..... Petitioner

Through: Mr P. V. Kapur, Sr. Advocate
alongwith Mr Nitesh Jain, Mr V. K.
Nagrath, Ms Kaveri Gupta and Mr
Abhinav Mukhi, Advocates.

versus

**MINISTRY OF ROAD TRANSPORT AND
HIGHWAYS**

..... Respondent

Through: Mr Dev P. Bhardwaj, CGSC for UOI
with Mr Kanish Arora, Advocate with
Mr Anoop Yadav, AE, Morth.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER

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01.05.2018

IA No.5431/2018

1. Allowed, subject to all just exceptions.

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2. The petitioner has filed the present petition under Section 11 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 the 'Contract Agreement' dated 19.02.2014 (hereafter 'the Agreement'). The Agreement includes a dispute resolution clause, the relevant extract of which reads as under:-

"26.1 Dispute Resolution

26.1.1 Any dispute, difference or controversy of whatever nature howsoever arising under or out of or in relation to this Agreement (including its interpretation) between the Parties, and so notified in writing by either Party to the other Party (the “Dispute”) shall, in the first instance, be attempted to be resolved amicably in accordance with the conciliation procedure set forth in Clause 26.2.

26.1.2 The Parties agree to use their best efforts for resolving all Disputes arising under or in respect of this Agreement promptly, equitably and in good faith, and further agree to provide each other with reasonable access during normal business hours to all non-privileged records, information and data pertaining to any Dispute.”

3. The petitioner had invoked the arbitration clause by a letter dated 10.10.2017, *inter alia*, stating that “*since the disputes have not been of the Contract Agreement amicably by conciliation, we hereby invoke provision under clause 26.3 and refer the disputes to Arbitration for decision by a Board of Arbitrators appointed in accordance with clause 26.3 of the Condition of Contract. Accordingly, we hereby nominate Justice V K Gupta, Chief Justice of Himachal Pradesh High Court (Retd.) as our nominee on the said three member Board of Arbitrator*”.

4. The respondent responded to the said letter, by a letter dated 25.10.2017, *inter alia*, stating that the request for appointment of the arbitrator would be contrary to the provisions of Article 26 of the Agreement. The stand of the respondent was that some of the issues have been amicably resolved.

5. The learned counsel appearing for the petitioner states that in accordance with Article 26 of the Agreement, either party may refer the disputes to the Chairman of the Authority and the Chairman of the Board of Directors of the Contractor for an amicable settlement. The learned counsel appearing for the petitioner also states that the petitioner is ready and willing to make a sincere effort to find an amicable resolution in accordance with Clause 26.2 of the Agreement.

6. In view of the above, the present petition is disposed of by directing the Chairman of the petitioner to meet the Director General of the respondent authority (which this Court is informed, the competent authority) on 15.05.2018 at the office of the Director General of the respondent for seeking amicable resolution of the disputes in accordance with clause 26.2 of the Contract Agreement. In the event, the parties are unable to resolve the disputes within a period of 15 days, thereafter, the petitioner would be at liberty to invoke the arbitration clause in accordance with Clause 26.3 of the Agreement.

7. The petition is disposed of in the above terms.

8. Order *dasti* under signatures of the Court Master.

VIBHU BAKHRU, J

MAY 01, 2018

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