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

+ **ARB.P. 405/2018**

RAM KUMAR SHARMA & ANR.

..... Petitioners

Through: Counsel for the petitioners
(appearance not given).

versus

**DELHI METRO RAIL CORPORATION
LIMITED**

..... Respondent

Through: Mr Tarun Johri, Advocate with Mr
Sanjay Kumar, Advocate.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER

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28.05.2018

IA No.7492/2018

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 for appointment of an arbitrator to adjudicate the disputes that have arisen between the parties in connection with Memorandum of Understanding dated 19.11.2015 (hereafter 'the MoU'). The MoU includes an arbitration clause, which reads as under:-

“8.2 In the event of any dispute, difference of opinion or dispute or claim arising out of or relating to this MOU or breach, termination or the invalidity thereof, shall firstly

be attempted to be settled by conciliation.

All disputes relating to this MOU or any issue whether arising during or after the completion thereof or any matter directly or indirectly to a sole conciliator appointed/nominated by director of DMRC on receipt of such requests from either party. The Conciliator shall make the settlement agreement after the parties reach agreement and shall give an authenticated copy thereof to each of the parties.

The settlement agreement shall be final and binding on the parties. The settlement agreement shall have the same status and effect of an arbitration award. The view expressed or the suggestions made or the admissions made by either party in the course of conciliation proceedings shall not be introduced as evidence in any arbitration proceedings.

Any dispute that cannot be settled through conciliation procedure shall be referred to arbitration in accordance with the procedure given in the para below. The parties agree to comply with the awards resulting from arbitration and waive their rights to any form of appeal insofar as such waiver can validly be made.

Arbitration Procedure

If the efforts, to resolve all or any of the disputes through conciliation fails, then such disputes shall be referred within 30 days to a Sole Arbitrator who would be nominated by Director, Delhi Metro Rail Corporation Limited. The venue of such arbitration shall be Delhi/New Delhi. The award of the sole Arbitrator shall be binding on all the parties. The cost of Arbitration shall be borne by the respective parties. There will be no objection if conciliator/or sole arbitrator nominated/appointed is an employee of DMRC.

The Arbitration proceedings shall be governed by Indian Arbitration and Conciliation Act, as amended from time

to time including provisions in force at the time the reference is made.”

3. The learned counsel appearing for the respondent does not dispute the existence of the arbitration clause or that the same had been validly invoked.
4. It is therefore, necessary that an arbitrator be appointed to adjudicate the disputes between the parties.
5. With the consent of the parties, it is directed that an arbitrator be appointed by the Delhi International Arbitration Centre (DIAC) to adjudicate the disputes relating to the MoU and falling within the scope of arbitration clause as set out above. The arbitration shall be conducted under the aegis of the DIAC and in accordance with its Rules.
6. The parties shall appear before the Coordinator, DIAC on 05.06.2018 at 11:00 AM.
7. All rights and contentions of the parties are reserved.
8. The petition is disposed of.

VIBHU BAKHRU, J

MAY 28, 2018
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