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

+ **ARB.P. 379/2018**

AMARJEET SINGH

..... Petitioner

Through Mohd Kaleem Khan, Mr M.H. Chauhan,
Mr Parpoorn singh, Ahmad Jafar Abbasi,
Advocates.

versus

BHARAT HEAVY ELECTRICALS LIMITED Respondent

Through Mr Pallav Kumar, Mr Prashant Kumar,
Advocates.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER

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22.05.2018

IA No. 7144/2018

1. Allowed, subject to all just exceptions.
2. The application is disposed of.

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3. 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 connection with the agreement dated 03.04.2012 (hereafter 'the Agreement'). The Agreement includes an arbitration clause which is set out below:-

"24.0 ARBITRATION:

Except where otherwise provided for in the contract all questions & disputes relating to the meaning of the specification designs, drawings and instruction herein before mentioned and as to the quality of workmanship or materials used on the work or as to any other question, claim, right, matter or thing whatsoever in any way arising out of or relating to the contract, designs, drawings specifications, estimates, instructions, orders of these conditions or otherwise concerning the works, of the execution or failure to execute the same whether arising during the progress of the work or after the completion or abandonment thereof shall be referred to the sole arbitration of the Head TBG BHEL, New Delhi and if the Head TBG is unable or unwilling to act, to the sole arbitration of some other person appointed by the Head TBG willing to act as such arbitrator. There will be no objection if the arbitrator so appointed is an employee of BHEL and that he had to deal with the matters to which the contract relates and that in the course of his duties as such he had expressed views on all or any of the matters in dispute of difference. The arbitrator to whom the matter is originally referred being transferred or vacating his office or being unable to act for any reason such Head TBG as aforesaid at the time of such transfer vacation of office or inability to act shall appoint (see note) another person to act as arbitrator in accordance with the terms of the contract such person shall be entitled to proceed with the reference from the stage at which it was left by his predecessor. It is also a term of this contract that no person other than a person appointed by such Head TBG as aforesaid should act as arbitrator and if for any reason that is not possible the matter is not to be referred to arbitration at all, in all cases where the amount of the claim dispute is Rs.50,000/- (Rupees fifty thousand) and above the arbitrator shall give reasons for the award.

Subject as aforesaid the provisions of the arbitration Act, 1940 or any statutory modification or re-enactment thereof and the rules made there under and the time being in force shall apply to the arbitration proceeding under this clause.

It is a term of the contract that the party involving arbitration shall specify the dispute or disputes to be referred to arbitration under this clause together with the amounts claimed in respect of each dispute.

The arbitrator (s) may from time to time with consent of the parties enlarge the time for making and publishing the award.

The work under the contract shall, if reasonably possible, continue during the arbitration proceedings and no payment due or payable to the contractor shall be withheld on account of such proceedings.

The Arbitrator shall be deemed to have entered on the reference on the date he issues notice to both the parties fixing the date of the first hearing.

The Arbitrator shall give a separate award in respect of each dispute or difference referred to him.

The Venue of arbitration shall be such place as may be fixed by the Arbitrator in his sole discretion.

The award of the arbitrator shall be final, conclusive and binding all parties to this contract.

Laws governing the Contract:

The contract shall be governed by the Indians Laws for the time being in force.

NOTE:- The authority appointing the arbitrator should not be lower in rank than the authority accepting the agreement.”

4. In view of the disputes that are stated to have arisen in relation to the Agreement, the petitioner had invoked the arbitration clause by a letter dated 13.01.2018. The learned counsel appearing for the respondent states that the

respondent had suggested three names, one of whom could be appointed as the sole arbitrator; however, the petitioner has not concurred with any of the said suggested names.

5. Since it is not disputed that an arbitration clause exists between the parties and that the same has been duly invoked, it is necessary that a sole arbitrator be appointed to adjudicate the disputes in relation to the Agreement falling within the scope of the arbitration clause.

6. Accordingly, Mr Mahmood Ali Khan, Retd. Judge, Delhi High Court (Mobile No. 9810780634) is appointed as the sole arbitrator to adjudicate the disputes in connection with the disputes 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. The arbitrator shall fix the arbitral fees in consultation with the learned counsel for the parties and having regard to the fourth schedule to the Act.

7. The parties are at liberty to approach the arbitrator for further proceedings.

8. The petition is disposed of

VIBHU BAKHRU, J

MAY 22, 2018

pkv