

\$~5

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

+ ARB.P. 435/2018

H.R. DHANKAR

Through Mr.Avinash Trivedi and Ms.Ritika  
Trivedi, Advs. .... Petitioner

versus

NEW DELHI MUNICIPAL COUNCIL

Through Mr.Vivek Aggarwal and Mr.Annirudh  
Sharma, Advs. along with Mr.Ashok  
Kumar, Er.S.E and Mr.Rakesh Kaul,  
Er., NDMC ..... Respondent

**CORAM:**

**HON'BLE MR. JUSTICE NAVIN CHAWLA**

**ORDER**

%

**24.09.2018**

This petition under Section 11 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as the 'Act') has been filed by the petitioner seeking appointment of the Sole Arbitrator for adjudicating the disputes that have arisen between the parties in relation to the work of "Resurfacing of B.K. Dutt Colony, Aliganj Colony, Lodhi Colony, Jor Bagh Colony Road and other colony service roads in Sub-Division III area" vide Letter of Acceptance dated 27.05.2013 and Agreement no. 15/EE(R-II)/2013-14 dated 09.07.2013.

The Agreement between the parties contains an Arbitration Agreement in form of Clause 25 of the General Condition of Contract (GCC).

The disputes having arisen between the parties, the petitioner invoked

the arbitration procedure vide letter dated 09.02.2018 addressed to the Executive Engineer of the respondent. Having received no response, the petitioner filed an appeal to the Superintending Engineer of the respondent on 08.03.2018. Again having failed to receive any response, the petitioner vide letter dated 11.04.2018 addressed to the Chief Engineer of the respondent, called upon the Chief Engineer to release the payment failing which to appoint an Arbitrator. On 18.04.2018 the Executive Engineer rejected the claims of the petitioner on the ground that the petitioner had failed to complete the work in spite of request, letters and issuance of show cause notices by the respondent.

The petitioner filed the present petition as the respondent had failed to appoint the Arbitrator in terms of Clause 25 of the GCC.

The respondent in its reply has reiterated that in spite of issuance of show cause notice, the petitioner did not complete the work and therefore, the respondent rescinded the work on 30.01.2015. It is further contended that the respondent has acted in accordance with the terms of the contract between the parties.

I have considered the submission made by the counsel for the respondent. As the existence of the Arbitration Agreement and due invocation thereby by the petitioner are not denied by the respondent, I do not see any impediment in appointing a Sole Arbitrator for adjudicating the disputes that have arisen between the parties in relation to the abovementioned Agreement. The plea taken by the respondent in its reply is one on merits of the claim of the petitioner and has to be adjudicated by the Arbitrator and not by this Court while exercising its jurisdiction under Section 11 of the Act.

I appoint **Ms.Justice Pratibha Rani**, Retired Judge of this Court (R/o 8-B, Lodhi Estate, New Delhi-110003, Mob. No.9910384626) as a Sole Arbitrator for adjudicating the disputes that have arisen between the parties in relation to the abovementioned Agreement.

With the consent of the parties, which is given on instruction, it is directed that the arbitration shall be conducted under the aegis of Delhi International Arbitration Centre (DIAC) and the DIAC Rules as to procedure and fee shall apply.

The petition is allowed with the above directions, with no order as to cost.

**NAVIN CHAWLA, J**

**SEPTEMBER 24, 2018/Arya**