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

+ **ARB.P. 520/2018**

KALINDEE RAIL NIRMAN

..... Petitioner

Through: Mr.Sudhir Nandrajog, Sr. Adv. with
Mr.Vijayender Kumar, Mr.Dhruv
Kapur & Mr.Maharshi Kaler, Advs.

versus

NORTHERN RAILWAY

..... Respondent

Through: Mr.Jagjit Singh & Mr.Preet Singh,
Advs.

CORAM:

HON'BLE MR. JUSTICE NAVIN CHAWLA

ORDER

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28.09.2018

1. 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 an Arbitrator for adjudicating the disputes that have arisen between the parties in relation to the Agreement dated 16.12.2009 executed between the parties in relation to the work of "Outdoor and Indoor works with part supply of signalling gears with centralized operation of points & signals at 8 stations i.e. Sonapat, Sandal Kalan, Ganaur, Bhodwal Majri, Samalkha, Diwana,. Dhoda Kheri, Dhola Majra stations of Delhi division of Northern Railway".

2. The Agreement between the parties contains an Arbitration Agreement in form of Clause 40.1 thereof, which is reproduced hereinbelow:-

"40.0 ARBITRATION

40.1 In the event of dispute or difference between the parties herein as to the construction or operation of the contract, or the respective rights and liabilities of the parties on any matter

in question, dispute or difference on any account or as to the withholding by the Railways of any certificate to which the Contractor may claim to be entitled to, or of the Railways fails to make a decision within 120 days, then and in any such case, but expect in any of the expected matters referred to in clause 63 of General Conditions of Contract, the Contractor, after 120 days but within 180 days of the presenting his final claim on disputed matters shall demand in writing that the dispute or difference be referred to Arbitration.

i. The demand for arbitration shall specify the matters which are in question or subject of the dispute or difference as also the amounts of claim item-wise. Only such dispute(s) or difference(s) in respect of which the demand has been made, together with counter claims or set-off, shall be referred to arbitration and other matters shall not be included in reference.

a. The Arbitration proceedings shall be assumed to have commenced from the day a written and valid demand for arbitrations is received by the Railways.

b. The Claimant shall submit his claim stating the facts, supporting the claims along with all relevant documents and the relief or remedy sought against each claim within a period of 30 days from the date of appointment of the Arbitral Tribunal.

c. The Railways shall submit its defence statement and counter claims if any within a period of 60 days of receipt of copy of claims from Tribunal Thereafter', unless otherwise extension has been granted by tribunal.

ii. No new claim shall be added during proceedings by either party. However party may amend or supplement the original claims or defense thereof during the course of arbitration proceedings subject to acceptance by Tribunal having due regard to any objection in making it.

iii. If the Contractor(s) does/do not prefer his/their specific and final claims in writing within a period of 90 days of receiving the intimation from the Railways that the final bill is ready for payment, he/they will be deemed to have waived his/their claim(s) and the Railways shall be discharged and

released of all liabilities under the contract in respect of these claims.”

3. Disputes having arisen between the parties, the petitioner invoked the Arbitration Agreement vide its notice dated 07.04.2018. The respondent by its reply dated 07.05.2018 stated that the request for appointment should be sent to the General Manager of the respondent at Barodra House, India Gate, New Delhi, and did not appoint an Arbitrator. The petitioner therefore filed the present petition.

4. As the existence of the Arbitration Agreement and due invocation thereof are not denied by the respondent, I see no impediment in appointing a Sole Arbitrator for adjudicating the disputes that have arisen between the parties in relation to the abovementioned Contract.

5. I appoint **Justice R.V. Easwar**, Retired Judge of this Court (R/o D-14, Hauz Khas, New Delhi, Mobile: 9560899997) as a Sole Arbitrator for adjudicating the disputes that have arisen between the parties. The Arbitrator shall give a disclosure under Section 12 of the Act before proceeding with the reference.

6. The arbitration shall be conducted under the aegis of the Delhi International Arbitration Centre (DIAC). The DIAC Rules as to procedure and fees shall apply to such arbitration proceedings.

7. The petition is allowed in the above terms, with no order as to cost.

NAVIN CHAWLA, J

SEPTEMBER 28, 2018/rv