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IN THE HIGH COURT OF DELHI AT NEW DELHI

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ARB.P. 602/2018

SAGAR CONSTRUCTIONS

..... Petitioner

Through Mr. Sanjay Bansal, Adv.

versus

GOVT OF NCT OF DELHI & ANR.

..... Respondents

Through Ms.Shreya Mehta, Adv.

CORAM:

HON'BLE MR. JUSTICE RAJIV SHAKDHER

ORDER

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28.09.2018

1 This is a petition filed under Section 11 of the Arbitration and Conciliation Act, 1996 (in short '1996 Act'). The petitioner avers that since the respondents failed to appoint an Arbitrator despite steps having been taken under clause 25 of the agreement obtaining between the parties, it has been constrained to approach the Court for appointment of an Arbitrator in the matter.

2 Learned counsel for the petitioner says that as required under clause 25 of the agreement, the petitioner had, in the first instance, approached the Superintendent Engineer on 03.07.2017, for release of its payments. The Superintendent Engineer, however, did not respond to the request made by the petitioner.

3 Accordingly, the petitioner, thereafter, invoked the arbitration agreement on 17.10.2017 by approaching the Chief Engineer (North)

in that behalf. This was followed by a legal notice dated 24.01.2018. The said legal notice was acknowledged by the respondents vide their letter dated 20.02.2018.

4 The petitioner, thereafter, issued a legal notice dated 09.04.2018. In this legal notice, request was made by the petitioner to the respondent to appoint an Arbitrator in the matter.

5 Since, the respondents had failed to act in terms of clause 25 of the agreement obtaining between the parties, the petitioner was constrained to approach this Court by way of the instant petition.

6 Notice in the petition was issued on 17.08.2018. On that date, the respondents were represented by Mr. Anupam Srivastava. Three weeks were accorded to Mr. Anupam Srivastava for filing a reply. The matter was posted for further proceedings today i.e. 28.09.2018.

7 Ms. Shreya Mehta, who, appears for the respondents, says that, though, a reply has not been filed, an Arbitrator has been appointed. For this purpose, learned counsel has placed on record a communication dated 19.09.2018, received by Mr. Anupam Srivastava, who is the Additional Standing counsel for respondent no.1. This communication is indicative of the fact that the respondents have appointed, one, Mr. S.P. Singh as an Arbitrator in the matter in terms of clause 25 of the agreement obtaining between the parties.

8 Mr. Bansal, who, appears for the petitioner, says that the respondents have lost their right to appoint an Arbitrator. It is Mr. Bansal's contention that since the petitioner had already moved the instant petition, in which notice was issued on 17.08.2018, the

subsequent appointment of an Arbitrator by the respondents is ineffectual.

9 I tend to agree with the submissions made by the learned counsel for the petitioner. This submission is in line of the judgment of the Supreme Court in *Datar Switchgears Ltd.v TATA Finance Ltd. and Another* (2000) 8 SCC 151.

10 Accordingly, Mr. Chander Bhan Jaglian, former District and Sessions Judge (9999056150), is appointed as Arbitrator. The Arbitrator shall be paid a fee in terms of Fourth Schedule appended to the 1996 Act.

11 The petition is disposed of in the aforesaid terms.

RAJIV SHAKDHER, J

SEPTEMBER 28, 2018

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