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

+ ARB.P. 505/2017

DSC LIMITED- BEST & CROMPTON ENGINEERING
PROJECTS LTD. (JV)

..... Petitioner

Through: Mr Deepak Khurana, Advocate.

versus

RAIL VIKAS NIGAM LTD

..... Respondent

Through: Mr Udit Seth, Advocate.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER

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21.02.2018

1. This is a petition filed under Section 11(6) of the Arbitration and Conciliation Act, 1996 (hereafter 'the Act'). The petitioner prays that an Arbitral Tribunal be constituted. The petitioner states that it has already nominated its arbitrator and an Arbitral Tribunal be constituted by appointing an arbitrator on behalf of the respondent and the presiding arbitrator.

2. At the outset, it is relevant to refer to the dispute resolution clause of the agreement between the parties. The relevant extract of the arbitration clause is set out as under:-

“Arbitration— Any dispute in respect of which amicable

settlement has not been reached shall be finally settled as set forth below:-

(i) In the case of dispute arising between the Employer and the Domestic or Foreign Contractor the disputes shall be settled in accordance with the Indian Arbitration Act, 1996 related to any matter arising out of or connected with this contract. Such dispute shall be referred to the Arbitral Tribunal consisting of 3 (three) arbitrators, one each to be appointed as under:-

(a) Employer will forward a panel of 5 names to the contractor and contractor will give his consent for any one name out of the panel to be appointed as one of the Arbitrators.

(b) Employer will decide the second Arbitrator out of the remaining four names in the panel as mentioned in para (a) above.

(c) Third arbitrator shall be chosen by the two arbitrators so appointed by the parties and shall act as Presiding Arbitrator in case of failure of the two arbitrators, appointed by the parties to reach upon a consensus within a period of 30 days from the appointment of the arbitrators subsequently appointed then upon the request of either or both parties, the Presiding arbitrator shall be appointed by the Managing Director, Rail Vikas Nigam Limited, New Delhi. The Indian Arbitration and Conciliation Act, 1996 and any statutory modification or re-enactment thereof, shall apply to these arbitration proceedings.

It is further agreed between the parties that no person other than the persons appointed as per above procedure shall act as arbitrator.”

3. Plainly, the procedure adopted by the petitioner in appointing its Arbitrator is not in accordance with the arbitration clause.

4. In terms of the aforesaid clause, the respondent has already furnished panel of five names to the petitioner. The learned counsel appearing for the

respondent states that he would submit a fresh panel of atleast thirteen persons. This would be forwarded to the petitioner within a period of one week from today. The learned counsel appearing for the parties concur that the petitioner would nominate one arbitrator out of the said panel within a period of one week thereafter. The respondent would also appoint one arbitrator from the said panel within a period of one week after receiving the petitioner's nomination. The said arbitrators would jointly concur on appointment of former Judge of this Court or the Supreme Court as the Presiding Arbitrator within a period of two weeks thereafter.

5. The said appointments shall be subject to the provisions of the Act.
6. All rights and contentions of the parties including as to the jurisdiction of the Arbitral Tribunal are reserved.
7. This order has been passed in view of the consensus arrived at between the parties.
8. The petition is disposed of.
9. Order *dasti*.

VIBHU BAKHRU, J

FEBRUARY 21, 2018/MK