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IN THE HIGH COURT OF DELHI AT NEW DELHI

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ARB.P. 789/2018

KETAN CONSTRUCTION COMPANY Petitioner

Through: Mr.Sanjay Bansal, Adv.

versus

ALPHA CORP DEVELOPMENT PRIVATE LIMITED

..... Respondent

Through: Mr.Vivek Kohli, Mr.Sandeep Bhuraria,
Mr.Nikhil Mathur, Advs.

CORAM:

HON'BLE MR. JUSTICE NAVIN CHAWLA

ORDER

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22.10.2018

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 Contract Agreement dated 10.01.2013 executed between the parties whereby the respondent had appointed the petitioner for carrying out the works relating to Road, Pavements & External Development Works for its 'Alpha International City (Phase-II)' at Karnal, Haryana.

2. The said Agreement contains the procedure of Settlement of Dispute/Arbitration in form of clause 52 thereof, which is reproduced hereinbelow:

"52. SETTLEMENT OF DISPUTES/ ARBITRATION:

52.1 All disputes and differences of any kind whatsoever arising out of or in connection with this Contract as also with regard to the implementation, meaning, interpretation or implications of the various clauses of the Contract and those of the Contract Documents or in respect of any other matter or thing arising out of or relating to the development and construction of the Project whether during the progress of the work or after their completion shall be communicated by the Contractor in writing to the Owner and all possible efforts would be made by the Parties to sort out and resolve all such matters of controversy, disputes and differences, amicably with due respect and effective priority. In case, the Contractor and the Owner were unable to resolve such issues amicably latest within 10 working days from their date of receipt of such communication by the Owner. In such eventuality the Owner shall take their decision thereon without any undue delay and preferably within next 10 working days and there upon they shall notify in writing such decision to the Contractor within next 5 working days.

52.2 Decisions, directions and clarifications pertaining to measurements, drawings and certificates taken by the C.E.O. of M/s Alpha G:Corp Development Pvt. Ltd. shall be final and binding on the Parties. The Decisions so taken with respect to any matter the decision for which is specially provided for by these or other special conditions to be given and made by the Owner / their C.E.O. with or without the concurrence of the Owner or of the Architect are exempted matters for the purpose of Arbitration proceedings and shall not be set aside on account of non-observance of any formality, any omission, delay or error in proceeding in or about the same or on any other ground or for any reason. They shall be specifically excluded from the scope of arbitration proceedings hereinafter referred to.

52.3 Subject as aforesaid in Clauses 52.1 and 52.2, all disputes and differences whatsoever, which shall at any time hereafter arise between the Parties hereto, touching or concerning this Agreement or its interpretation or effect or as

to the rights, duties, obligations and liabilities of the Parties hereto or either of them under off by virtue of this Agreement or otherwise as to any other matter in any way connected with or arising out of or in relation to the subject matter of this Agreement shall be referred to the Arbitration in accordance with the provisions of Arbitration and Conciliation Act 1996. The Parties agree that the reference of the disputes and differences between the Parties would be made to the Sole Arbitrator to be appointed by the Owner.

52.4 The jurisdiction and arbitration venue shall be at New Delhi. The procedure for the arbitration shall be determined by the Arbitrator. Costs of such arbitration shall be equally shared between the Owner and the Contractor. The Parties undertake to abide and remain bound by the award of the Arbitrator so rendered.

52.5 The Contractor shall not, except with the consent in writing of the Owner, in any way delay the carrying out of the Work by reason of such matter, question or dispute is being referred to arbitration. On the contrary the Contractor shall proceed with the work with all due diligence and shall, until the decision of the Arbitrator is given, abide by the decision of the Owner. The award of the Arbitrator shall not relieve the Contractor of his obligations to adhere strictly to the Owner's instructions with regard to the actual carrying out of the work save and except as the Award may specifically affect such instructions.

This tender shall be subject to the jurisdiction of the courts at New Delhi.”

3. Clause 52.3 provides for the appointment of a sole Arbitrator by the owner, that is, the respondent herein.
4. Disputes having arisen between the parties, the respondent vide its letter dated 17.05.2018 (wrongly typed as 17.05.2017) appointed a Sole Arbitrator and sought his consent for such appointment. The Arbitrator vide his notice dated 30.05.2018, called upon the parties to

appear before him on 05.06.2018.

5. Counsel for the petitioner submits that after the letter dated 30.05.2018, the respondent has not appointed the Arbitrator and therefore, the present petition is maintainable as the respondent had failed to perform the function entrusted on it.

6. I have considered the submissions made by the counsel for the petitioner, however, find no force in the same.

7. The letter dated 17.05.2018 sought consent from the proposed Arbitrator. The Arbitrator gave his consent to such appointment by the letter dated 30.05.2018 and also called upon the parties to appear before him on 05.06.2018. The petitioner has also filed an application under Section 12 of the Act challenging the Arbitrator. The counsel for the respondent submits that the arguments have been advanced on the said application and orders are expected.

8. In that view of the matter, as the Arbitrator already stands appointed in accordance with the Arbitration Agreement between the parties, the present petition is not maintainable and the same is dismissed without any orders as to costs.

9. This shall, however, not prejudice the petitioner in its submissions before the Arbitrator.

NAVIN CHAWLA, J

OCTOBER 22, 2018
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