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IN THE HIGH COURT OF DELHI AT NEW DELHI

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ARB.P. 764/2017

NAVEEN CONSTRUCTIONS

..... Petitioner

Through : Mr.S.W.Haider, Advocate.

versus

UNION OF INDIA

..... Respondent

Through : Mr.N.Prashant Kumar Nair, Advocate

CORAM:

HON'BLE MR. JUSTICE YOGESH KHANNA

ORDER

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12.02.2018

The petitioner filed this petition under Section 11 of the Arbitration and Conciliation Act, 1996 (hereinafter referred as 'the Act') for appointment of an arbitrator.

It is the case of the petitioner that on 13.01.2010 the work pertaining to "Earthwork in filling, embankment and cutting, provision of blanketing material, construction of bridges and other allied works between KM 30.50 to KM 59.000 on Jind-Sonipat Section in connection with Jind-Sonipat new line Zone III was awarded to the petitioner vide Agreement No.74W/1/2/294/WA/CSB for Rs.18,57,54,999.40/ - which was to be completed within 18 months from the aforesaid date and was to expire on 12.07.2011. The said deadline could not be achieved and execution period was extended till 30.12.2014 and could be completed with facing several problems/hindrances in execution of the work. It is also the case of

the petitioner that after following the respondent for payment of the bills, and failure on the part of respondent, petitioner was constrained to write letter dated 25.05.2017 to the respondent whereby it had also duly intimated the respondent about its grievances and the possibility of raising further claims. The respondent prepared and paid the final bill on 28.06.2017 wherein certain claims were left against various items executed by the petitioner. Vide the notice dated 08.08.2017 the petitioner invoked the arbitration agreement between the parties as per clause No.64 of the General Conditions of the Contract and called upon the respondent to make the payment of claims of the petitioner. The respondent has not bothered to respond to invocation request of petitioner, hence this petition.

The arbitration agreement as contained in clause No.64 of the General Conditions of the Contract executed between the parties notes as under:-

*“64 (1) (I) **Demand for Arbitration.**-- In the event of any dispute or differences between the parties hereto as to the construction or operation of this 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 Railway of any certificate to which the contractor may claim to be entitled to, or if the Railway fails to make a decision within 120 days, then and in any such case, but except in any of the ‘expected matters’ referred to in clause 63 of these conditions, the contractor, after 120 days but within 180 days of his presenting his*

final claim on disputed matters, shall demand in writing that the dispute or difference be referred to arbitration.”

The learned counsel appearing on behalf of the respondent submits that they have no objection, if any Retired Judge of this Court is appointed as an arbitrator subject to reservation on two counts – **a)** the petitioner has signed the supplementary settlement whereby it had waived off its right to refer the matter to arbitration; and **b)** certain claims are ‘expected matters’.

There is no denial of the fact the pleas raised by the learned counsel for respondent can very well be addressed during the arbitral proceedings.

In view of the above facts and submissions of the learned counsel for the respondent, Justice M.L. Mehta (Retired) (Mobile No.9910384620) is hereby appointed as an arbitrator to adjudicate upon the disputes between the parties. The proceedings be conducted under the aegis of the Delhi International Arbitration Centre (DIAC) and the fee shall be paid as per the Fee Schedule of DIAC. Parties to appear before the learned co-ordinator of the Delhi High Court Arbitration and Conciliation Centre on 28.02.2018 at 12.00PM.

Petition stands disposed of.

YOGESH KHANNA, J

FEBRUARY 12, 2018

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