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

+ **ARB.P. 801/2017**

AUTOMETERS ALLIANCE LTD.

..... Petitioner

Through: Mr Anirudh Wadhwa and Mr Vipul
Kumar, Advocates.

versus

**GOVERNMENT OF NATIONAL CAPITAL
TERRITORY OF DELHI & ANR.**

..... Respondents

Through: Mr Ramesh Singh, Standing Counsel,
GNCTD with Mr Chirayu Jain,
Advocate.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER

% **18.05.2018**

1. The petitioner has filed the present petition under Section 11 of the Arbitration and Conciliation Act, 1996 (hereafter 'the Act'), *inter alia*, praying that a sole arbitrator be appointed to adjudicate the disputes that have arisen between the parties in relation to an agreement dated 06.05.2011 (hereafter 'the Agreement') entered into between the parties. The Agreement includes a dispute resolution clause, which is set out below:-

"13.1 Conciliation

(a) Save where expressly Excluded in this Agreement, any dispute, difference or controversy of whatever nature howsoever arising under, out of or in relation to this Agreement and so notified in writing by either Party to the other (the "Dispute") in the first instance shall be attempted to be resolved amicably in accordance with the conciliation procedure

provided in sub-article (b) under

(b) In the event of any Dispute between the Parties, such Dispute shall be referred to the Principal Secretary, Transport Department and the CEO/Managing Director of the Vendor for amicable settlement. Upon such reference, the said individuals shall meet not later than 7 (seven) days of the date of such request or such longer period as may be mutually agreed by the Parties to discuss and attempt to amicably resolve the Dispute. If such meeting does not take place within the said period or the Dispute is not amicably settled within 15 (fifteen) days of such meeting between the said two individuals, either Party may refer the dispute to arbitration in accordance with the provisions of Article 13.2.

(c) If the Dispute is not resolved as evidenced by the signing of the written terms of settlement within 30 (thirty) working days of the aforesaid notice in writing or such longer period as may be mutually agreed by the Parties then the provisions of Article 13.2 shall apply .

13.2 Arbitration

(a) Save where expressly excluded in this Agreement, any Dispute, which is not resolved amicably as provided in Article 13.1 shall be finally decided. by reference to sole Arbitrator, to be appointed by Lieutenant Governor of Delhi. Such arbitration shall be held in accordance with the provisions of the Indian Arbitration and Conciliation Act, 1996 and any amendments thereto. The arbitrator shall issue a reasoned Award.

(b) The venue of such arbitration shall be Delhi.

(c) The Vendor and Transport Department undertake to carry out any decision or award of the arbitrator (the "Award") without delay. Awards relating to any Dispute shall be final and binding on the Parties as from the date they are made.

(d) Pursuant to having exhausted the remedies, the Vendor and

Transport Department agree that an Award may be enforced against the Vendor and/or Transport Department, as the case may be and their respective assets wherever situated.

(e) This Agreement and rights and obligations of the Parties shall remain in full force and effect pending the Award in any arbitration proceeding hereunder.”

2. In terms of the Dispute Resolution Clause, the petitioner had sent a letter dated 05.09.2017 requesting the respondent for taking steps for resolving the disputes by conciliation in terms of Clause 13.1 of the Agreement. This request elicited no response from the respondent. Thereafter, by a letter dated 28.09.2017, the petitioner invoked the arbitration clause. By a separate letter sent on the same date, the petitioner also requested the Lieutenant Governor of Delhi to appoint an arbitrator.

3. Mr Ramesh Singh, learned counsel appearing for the respondent does not dispute that the petitioner had taken steps in accordance with the dispute resolution clauses as set out above. He; however, states that the letters dated 05.09.2017 requesting for conciliation as well as letter dated 28.09.2017 invoking the arbitration clause had reached at incorrect branch and, therefore, no steps could be taken by the respondent pursuant to the said letters. He further states that the letter addressed to the Lieutenant Governor for appointing an arbitrator was also sent by the office of the Lieutenant Governor to the department; however, it did not reach the concerned officer. Therefore, no further steps could be taken in that regard as well. He states that the respondent would be willing to make a sincere effort to resolve the disputes by conciliation.

4. I have heard the learned counsel for the parties.

5. There is no dispute that the arbitration clause exists between the

parties. It is also apparent that the petitioner had taken all steps necessary for invoking the dispute resolution clause in terms thereof. In the circumstances, this Court considers it apposite to appoint an arbitrator. Accordingly, Justice M.L. Mehta (Retd.) (Mobile No, 9910384620), a former judge of this court, is appointed as a sole arbitrator to adjudicate the disputes falling within the scope of the arbitration clause. This is subject to the arbitrator making the necessary disclosure under Section 12 of the Act and not being ineligible under Section 12(5) of the Act. The arbitrator shall also fix the fees in consultation with the parties and having regard to the Schedule IV of the Act.

6. Having stated above, this Court also considers it apposite that the parties should endeavour to resolve the disputes amicably as proposed by on behalf of the respondent. It is accordingly, directed that the arbitrator shall not enter into reference and his appointment shall not take effect for a further period of three months from today. In the event, the parties are able to resolve the disputes amicably, the same would be communicated to the arbitrator and no further steps towards resolution of the disputes by arbitration would be required. If the parties are unable to resolve the disputes within the time as specified, the arbitrator shall enter upon reference as indicated above, and adjudicate the disputes within a period of twelve months thereafter.

7. The petition is disposed of in the above terms.

8. Order *dasti*.

VIBHU BAKHRU, J

MAY 18, 2018/MK