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IN THE HIGH COURT OF DELHI AT NEW DELHI

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ARB.P. 795/2017

VIRENDER KUMAR JAIN JV

..... Petitioner

Through Mr. S.S. Sastry, Adv.

versus

DELHI TRANSCO LTD.

..... Respondent

Through Mr. Prashant Mehta, Ms. Vasundhra
Bhardwaj, Advs with Mr. Gaurav
Gupta, Manager Legal and Mr. Arun
Diwan, Manager Civil.

CORAM:

HON'BLE MR. JUSTICE RAJIV SHAKDHER

ORDER

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09.07.2018

1 This is a petition under Section 11 (6) of the Arbitration and Conciliation Act, 1996 (in short 'the Act').

2 The petitioner seeks appointment of a sole Arbitrator to adjudicate upon the disputes which have arisen between itself and the respondent.

3 Notice in this petition was issued on 12.12.2017. Since then, Mr. Mehta has entered appearance in the matter on behalf of the respondent.

3.1 Pertinently, there is no cavil raised by Mr. Mehta that disputes have arisen between the parties.

4 The record shows that the petitioner had sought appointment of an Arbitrator vide notice dated 04.08.2017 and, thereafter, proceeded to file the instant petition. This petition was instituted, in and about, 01.12.2017. The record also shows and, this is a fact which is not

disputed by Mr. Mehta, that the respondent appointed an Arbitrator and, communicated the same to the appointee, one, Mr. Surender Gangotra vide letter dated 25.01.2018.

4.1 It is the submission of the counsel for the petitioner that since the appointment was made after the captioned petition was moved in this Court, the respondent's nominee i.e., Mr. Gangotra, cannot act as the Arbitrator in the matter.

5 To my mind, the petitioner is right. (See *Datar Switchgears Ltd. vs. Tata Finance Ltd. & Another*, (2000) 8 SCC 151)

6 Given these circumstances, the prayer made in the petition is allowed. Hon'ble Mr. Justice S.P. Garg, a former Judge of this Court, is appointed as an Arbitrator in the matter. The learned Arbitrator will fix his own fee. Parties agree that the fee payable to the learned Arbitrator will be as per the Delhi International Arbitration Centre (DIAC) Fee Schedule. Furthermore, learned counsel for the parties agree that the arbitration will be conducted as per the rules framed by DIAC under its aegis.

7 Petition is disposed of in the aforementioned terms.

8 The Registry will dispatch a copy of this order to the learned Arbitrator as well as the DIAC.

RAJIV SHAKDHER, J

JULY 09, 2018

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