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

+ **ARB.P. 827/2017**

SAVANT INSTITUTE

..... Petitioner

Through: **Mr.A.K. Tewari & Mr.Vikramaditya
Singh, Advs.**

versus

NATIONAL INFORMATICS CENTRE SERVICES INC. & ANR.

..... Respondents

Through: **Mr.Ranjan Mozumdar, Adv. for R-1**

CORAM:

HON'BLE MR. JUSTICE NAVIN CHAWLA

ORDER

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08.02.2018

This petition under Section 11 of the Arbitration and Conciliation Act, 1996 has filed by the petitioner claiming appointment of an Arbitrator to adjudicate the disputes that have arisen between the parties in relation to the Works Order dated 09.09.2010. The Arbitration Agreement between the parties is contained in the document dated 24.03.2009 by which the petitioner was empanelled as a vendor by the petitioner and is reproduce herein under:-

“Arbitration

- 1. In case any dispute or difference arises out of or in connection with or the carrying out of works (whether during the progress of the works or after their completion and whether before or after the termination, abandonment or breach of contract) except as to any of the accepted matters, provided hereunder, the parties hereto, shall first endeavour to settle such disputes of differences amicably.*
- 2. If both the parties fail to reach such amicable settlement, then either party (the Purchaser or Contractor) may (within 28 days of*

such failure) give a written notice to the other party requiring that all matters in dispute or difference be arbitrated upon. Such written notice shall specify the matters which are in difference or differences of which such written notice has been given and no other shall be referred to the arbitration of a single arbitrator, to be appointed by both the parties or in case of disagreement as to the appointment of a single arbitrator, to that of two arbitrators, one to be appointed by each party or in case of said arbitrators not agreeing then, to the umpire to be appointed by the arbitrators in writing before entering upon the references. Provisions of Indian Arbitration & Conciliation Act, 1996 or any statutory modification or re-enactment thereof and rules framed there under from time to time shall apply to such arbitration.”

Disputes having arisen between the parties, the petitioner invoked the Arbitration Agreement vide its notice dated 17.11.2017. Having received no reply thereto, the present petition was filed.

The respondent in its reply has contended that the Arbitration Agreement required the petitioner to give a notice of the dispute within 28 days of the failure to reach at an amicable settlement; such notice having not been given by the petitioner, the petitioner cannot resort to the process of Arbitration. This plea of the respondent cannot be accepted. In ***National Insurance Co. Ltd. v. Sujir Ganesh Nayak & Co. And Another*** (1997) 4 SCC 366, Supreme Court had held that such Clauses in the Agreement would be violative of Section 28 of the Indian Contract Act and therefore, void. This Court in ***Pandit Construction Company v. Delhi Development Authority And Anr.*** 2007 (3) Arb. LR 205 (Delhi), relying upon the above judgment, held that a Clause in the Agreement which provides that the dispute must be raised within a period of 90 days from the raising of the final bill failing which arbitration cannot be resorted to, will be void as

being violative of Section 28 of the Contract Act.

The respondent has further contended that National Informatics Centre would be a necessary and proper party and in absence of the said Centre, the reference of the dispute to an Arbitrator would not be maintainable. In my view, this submission of the respondent is liable to be rejected as the Work Order in question has been issued by the respondent alone.

In view of the above, I see no impediment in the appointment of a Sole Arbitrator to adjudicate the disputes that have arisen between the parties in relation to the above mentioned Work Order.

With the consent of the parties, I refer the parties to the Delhi International Arbitration Centre (hereinafter referred to as the 'DIAC') who shall appoint a Sole Arbitrator for adjudicating the disputes between the parties. The Arbitration and the fee shall be governed by the DIAC rules.

Parties to appear before DIAC on 8th March, 2018 at 2:00 p.m.

The petition is allowed in the above terms with no order as to cost.

Dasti.

NAVIN CHAWLA, J

FEBRUARY 08, 2018/rv