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

+ **ARB.P. 4/2018**

NAVEEN KUMAR

..... Petitioner

Through: Mr Rajat Aneja, Mr Deepanjan Dutta
and Ms Vandna Dutta, Advocates.

versus

**CSIR-INSTITUTE OF GENOMICS & INTEGRATIVE
BIOLOGY**

..... Respondent

Through: Mr Anand Shailani, Advocate.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER

% **13.03.2018**

1. The petitioner has filed the present petition under Section 11 of the Arbitration and Conciliation Act, 1996 (hereafter 'the Act') praying that an arbitrator be appointed to adjudicate the disputes that have arisen between the parties in relation to the contract for Canteen Services at CSIR-Institute of Genomics and Integrative Biology (the respondent). The petitioner had caused a notice dated 26.08.2017 to be served, through his advocates, to the respondent raising several claims. However, the petitioner did not receive any response to the said Notice. And, this has led the petitioner to file the present petition.

2. The relevant extract of Paragraph 11 of the said Notice reads as under:

“11. That you Noticee is thus hereby called Upon to clear all the aforesaid dues as stated in the aforesaid paras amounting to Rs. 38,97,077/-, payable to our Client on account of gross breaches and to adequately compensate our client for illegal termination of the Contract by you Noticee; not only this, you

Noticee is also called upon to forthwith comply with Clauses (g) of the Contract and hence, refund the Performance Security Deposit of Rs. 2,00,000/-, along with interest @ 18% per annum within a period of two weeks from the date of receipt of the present Notice. In the event of failure to comply with the aforesaid within the time specified, we have specific instructions to invoke the Arbitration clause as provided under the terms and conditions of the Contract for recovering the aforesaid amounts as well as exemplary damages, alongwith interest@ 18% p.a. till the date of payment, and for which you shall be solely liable for all the costs, risks and consequences emanating therefrom. Moreover, you Noticee is also specifically called upon to desist from awarding fresh Contract to any third party until the payment of all the aforesaid dues to our Client.”

3. The abovementioned Notice cannot be accepted as invocation of the arbitration clause, as it merely provides that in the event the payments as demanded were not made, the Advocates engaged by the petitioner had the instructions to invoke the arbitration clause. An intention to invoke the arbitration in the event of disputes not being settled cannot be construed as invocation of the arbitration clause.

4. In view of the above, the petitioner would have to take the next step to invoke the arbitration clause. In the event the parties are unable to concur on reference of the disputes to an Arbitral Tribunal, the petitioner is at liberty to approach this Court.

5. The petition is disposed of.

VIBHU BAKHRU, J

MARCH 13, 2018
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