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

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Date of decision: 23.09.2019

+ O.M.P. (T) (COMM.) 22/2019

M/S ARORA CONSTRUCTION CO. (P) LTD. Petitioner

Through: Mr. Avinash Trivedi, Ms. Ritika
Trivedi, Advocate

versus

M/S RITES LTD.

..... Respondent

Through: Ms. Aakanksha Kaul, Mr. Manek
Singh, Advocates for R-2.

CORAM:

HON'BLE MS. JUSTICE JYOTI SINGH

JYOTI SINGH, J. (ORAL)

1. On the last date of hearing, this Court had directed the respondent to place the reply on record. However, despite this order, the reply is still not on record. The right of the respondent to file the reply is, thus, closed.
2. Learned counsel for the petitioner has sought termination of the mandate of Shri K.B. Dubey, the sole Arbitrator, appointed on 23.06.2017 on several grounds. After the matter was heard at some length, learned counsel for the respondent submits that the respondent has no objection in appointing another Arbitrator from their panel of Arbitrators.
3. The Arbitration Clause between the parties is extracted below:

"CLAUSE 25

Settlement of Disputes & Arbitration

Except where otherwise provided in the Contract all questions and disputes relating to the meaning of the specifications, design, drawings and instructions herein before mentioned and as to the quality of workmanship or materials used on the work or as to any other question, claim, right, matter or thing whatsoever in any way arising out of or relating to the Contract, designs, drawings, specifications, estimates, instructions, orders or these conditions or otherwise concerning the works or the execution or failure to execute the same whether arising during the progress of the work or after the cancellation, termination, completion or abandonment thereof shall be dealt with as mentioned hereinafter:

1) If the Contractor considers any work demanded of him to be outside the requirements of the Contract, or disputes and drawings, record or decision given in writing by the Engineer on any matter in connection with or arising out of the Contract or carrying out of the work, to be unacceptable, he shall promptly within 15 days request the Engineer-In-Charge shall give his written instructions or decision within a period of one month from the receipt of the Contractor's letter. If the Engineer-In-Charge fails to give his instructions or decision in writing within the aforesaid period or if the Contractor is dissatisfied with the instructions or decision of the Engineer-In- Charge, the Contractor may, within 15 days of the receipt of the Engineer-In-Charge decision, appeal to the Appellate Authority specified in Schedule 'F' who shall afford an opportunity to the Contractor to be heard, if the latter so desires, and to offer evidence in support of his appeal. If the Contractor is dissatisfied with this decision, the Contractor shall within a period of 30

days from receipt of the decision, give notice to the Accepting Authority specified in Schedule 'F' for appointment of arbitrator failing which the said decision shall be final binding and conclusive and not referable to adjudication by the arbitrator.

2) Except where the decision has become final, binding and conclusive in terms of Sub Para (1) above, disputes or difference shall be referred for adjudication through arbitrator by a sole arbitrator appointed by the Accepting Authority. The selection of Arbitrator by the Accepting Authority will be governed by the fact whether the dispute is (i) between two Public Sector Enterprises or (ii) between a Public Sector Enterprise and a Government Department or (iii) Otherwise. In case the disputes does not fall under item (i) or (ii) of this Para the Accepting Authority, shall appoint the sole Arbitrator, Within 30 days of receipt of notice from the Contractor to refer the dispute for Arbitration, the Accepting Authority stipulated in Schedule F shall send to the Contractor a list of three serving officers of RITES of appropriate status depending on the total value of claim, who have not been connected with the work under the Contract. The Contractor shall, within 15 days of receipt of this list select and communicate to the Accepting Authority, the name of one officer from the list who shall then be appointed as the Sole Arbitrator. If the Contractor fails to communicate his selection of name within the stipulated period, the Accepting Authority shall without delay, select one officer from the list and appoint him as the Sole Arbitrator ... "

4. Learned counsel for the respondent submits that in terms of the said Arbitration Clause, maintained by RITES, three names would be given to the petitioner and the petitioner would be at liberty to choose the name of one of the three Arbitrators to act as Sole Arbitrator.
5. With the consent of the parties, the mandate of Shri K.B. Dubey, learned Sole Arbitrator is hereby terminated. Learned counsel for the respondent would furnish the names of the three Arbitrators from the panel of RITES within a period of three weeks from today. The petitioner is at liberty to choose the name of any one of the three from the panel and the said Arbitrator will act as a Sole Arbitrator.
6. The substituted Arbitrator would give a disclosure under Section 12 of the Arbitration & Conciliation Act, 1996. The proceedings will resume from the stage at which they were left. The mandate of the substituted Arbitrator will commence from the date of appointment of the said Arbitrator.
7. Fee of the Arbitrator will be fixed as per Fourth Schedule of the Act.
8. The Court appreciates the fair stand taken by learned counsel for the respondent in the matter.
9. In view of the above, the petition stands disposed of.

JYOTI SINGH, J

SEPTEMBER 23, 2019

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