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

+ **W.P.(C) 2731/2019**

ENERGY INTERNATIONAL

..... Petitioner

Through Mr Saurabh Jain, Advocate.

versus

DELHI URBAN SHELTER

IMPROVEMENT BOARD

..... Respondent

Through Mr Parvinder Chauhan, Standing
Counsel with Mr Nitin Jain, Advocates for
DUSIB.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER

% **18.03.2019**

CM APPL. 12599/2019

1. Allowed, subject to all just exceptions.
2. The application is disposed of.

W.P.(C) 2731/2019 & CM APPL. 12598/2019

3. The petitioner has filed the present petition, *inter alia*, impugning the letters dated 08.03.2019 and 12.03.2019, whereby the Delhi Urban Shelter Improvement Board (DUSIB) has directed the petitioner to hand over the Jan Suvidha Complexes to the concerned Assistant Engineer(s) for further upkeep, operation and management. The petitioner was also called upon to remove its belongings including manpower, caretaker, safai karamcharis and supervisors etc. from the said complexes.

4. The learned counsel appearing for the petitioner claims that the said action is contrary to the contract entered into between the parties, whereby the petitioner was awarded the work for the construction of Jan Suvidha Complexes and for subsequent maintenance on “pay and use” basis for a period of 30 years.

5. The petitioner claims that the term of the contract is not over and the services provided by the petitioner are not violating any norms. Apparently, the said action has been taken on account of a change in the policy whereby DUSIB has decided to make the facilities available to the general persons free of cost. The petitioner claims that it is also willing to provide services on the said terms.

6. Mr Chauhan, the learned counsel appearing for the respondent states that the contract between the parties includes an arbitration clause and the parties need to be relegated to availing of contractual remedies.

7. The aforesaid contention is merited. The contract between the parties contains an arbitration clause, which reads as under:-

“9. Except where otherwise provided, in the contract all questions and disputes relating to the meaning the specifications, design drawing and instructions herein before mentioned and as to the quality of workmanship or material used on the work or as to any other question, claims right, matter of thing whatever, in any way arising out of, or relating to the contract, design, drawings, specifications, estimates, instructions, orders or these conditions or otherwise concerning the work on the execution or failure to execute the same whether arising during the progress of the work or after the completion or abandonment thereof, shall be referred to the sole arbitration of the Commissioner Municipal Corporation of Delhi the award of the arbitration shall

be final conclusive and binding on all parties to this contract.”

8. The petitioner’s grievance rests squarely on the allegation that the DUSIB has violated the terms of the contract.

9. At this stage, the learned counsel appearing for the parties state that the parties may be referred to arbitration. With the consent of the parties, Mr Prem Kumar, Retired Additional District Judge (Contact Number : +91-9873176030) is appointed as the Sole Arbitrator to adjudicate the disputes arising from the respective contracts/licences awarded to the petitioner for management/operation and maintenance of the Jan Suvidha Complexes. This is subject to the Arbitrator making the necessary disclosure under Section 12(1) of the Arbitration and Conciliation Act, 1996 and not being ineligible under Section 12(5) of the said Act. The Arbitration shall be conducted under the aegis of the Delhi International Arbitration Centre (DIAC) and in accordance with its Rules.

10. The parties are at liberty to approach the Co-ordinator, DIAC/the Arbitrator, for further proceedings.

11. The petition is disposed of. The pending application is also disposed of.

VIBHU BAKHRU, J

MARCH 18, 2019

pkv