

\$~26

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

+ ARB.P. 475/2019

M/S VARDHMAN INFRA

..... Petitioner

Through: Mr. Bhupesh Narula and Ms. Rinku
Narula, Advs.

versus

DELHI DEVELOPMENT AUTHORITY

..... Respondent

Through: Ms. Kanika Singh and Mr. Rishi
Vohra, Advs.

CORAM:

HON'BLE MR. JUSTICE V. KAMESWAR RAO

ORDER

%

14.10.2019

1. This petition has been filed by the petitioner under Section 11 (6) of the Arbitration and Conciliation Act, 1996.
2. The relevant clause in the contract with respect to Arbitration Dispute is clause 50, which reads as under:

A. 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 material used on the work or as to any other question, claim, right, matter or thing whatsoever in any way arising of or relating to the contract, design, 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 process of the work or after the cancellation, termination, completion or abandonment thereof shall be dealt with as mentioned hereinafter.

- i. If the contractor considers any work demanded of him to be outside the requirements of the contract, or disputes any drawings, record or decision given in writing by the Engineer-in-charge on any matter in connection with or arising out of the contract or carrying out the work, to be unacceptable, he shall promptly within 15 days request the Superintending Engineer in writing for written inspection or decision. Thereupon the Superintending Engineer shall give his written instructions or decision within a period of one month from the receipt of the contractor's letter.
- ii. If the Superintendent Engineer 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 Superintendent Engineer, the contractor may within 15 days of the receipt of Superintendent Engineer's decision appeal to the chief Engineer 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. The Chief Engineer shall give his decision within 30 days of the receipt of the contractor's appeal. If the contractor is dissatisfied with the decision, the contractor may within 30 days from the

receipt of the decision, give notice to the Engineer Member for appointment of Arbitrator, failing which the said decision shall be final, binding and conclusive and not referable to adjudication by the arbitrator.”

3. A reply stated to have been filed to the petition is not on record. A copy of the same has been handed over by the learned counsel for the respondent which is taken on record wherein in sum and substance, respondent has taken an objection that the petitioner has not written to the Engineer Member for appointment of an Arbitrator. In other words, the invocation of the arbitration clause is not proper. I am unable to agree with the said stand of the respondent inasmuch as there is no denial to the fact that the Advocate of the petitioner did write to the Engineer Member for appointment of an arbitrator. The said request was rejected primarily on the ground that there is no valid invocation, in as much as the communication is sent through the lawyer, in fact respondent has called upon the party to show the authorization to the lawyer to invoke the arbitration clause.

4. The fact remains a notice of invocation by a Lawyer is a valid invocation. In the case in hand, despite the letter of the lawyer, respondent has not appointed an Arbitrator, which means that the respondent has forfeited the right of appointment of an Arbitrator now.

5. Accordingly, I deem it appropriate to refer the parties to the Delhi International Arbitration Centre, which shall appoint an Arbitrator from its Panel. For preliminary hearing, counsel for the parties shall appear before the Coordinator DIAC on October 21, 2019. It goes without saying that since the dispute is relatable to a construction work, appropriate shall be for the DIAC to appoint an Arbitrator who is well-versed in construction

contracts within two weeks from the receipt of the copy of this order with a communication thereto to the parties. The appointment of the Arbitrator shall be regulated by the Rules of DIAC. All the contentions of the parties are left open.

6. A copy of this order be sent to the Coordinator, Delhi International Arbitration Centre.

7. The petition stands disposed of.

V. KAMESWAR RAO, J

OCTOBER 14, 2019/jg