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

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Date of decision: 11.12.2019

+ ARB.P. 833/2019

ASHA ENTERPRISES PVT. LTD THROUGH SHRI LOVE
SHARMA EXECUTIVE DIRECTOR Petitioner
Through: Mr. Sanjay Bansal, Advocate

versus

DELHI METRO RAIL CORPORATION LTD. Respondent
Through: Mr. Arjun Natarajan, Advocate

CORAM:
HON'BLE MS. JUSTICE JYOTI SINGH

JYOTI SINGH, J. (ORAL)

I.A. No.17517/2019

Exemption allowed, subject to all just exceptions.

Application stands disposed of.

ARB.P. No.833/2019

1. Issue notice.
2. Mr. Arjun Natarajan, Advocate enters appearance and accepts notice on behalf of the respondent. He submits on instructions from the respondent that he has no objection to the petition being allowed and the Arbitral Tribunal being constituted.
3. The Arbitration Clause between the parties reads as under:

“If the efforts to resolve all or any of the disputes through conciliation fails, then such disputes or differences, whatsoever arising between

the parties, arising out of touching or relating to construction/manufacture, measuring operation or effect of the Contract of the breach thereof shall be referred to Arbitration in accordance with the following provisions:

- (a) Matters to be arbitrated upon shall be referred to a sole Arbitrator if the total value of the claim is upto 5 million and to a panel of three Arbitrators if total value of claims is more than Rs.5 million and a panel of five Arbitrators which may also include DMRC officers for claims of more than Rs.5 million. The Contractor shall have to choose the sole Arbitrator from the panel of three and/or one Arbitrator from the panel of five in case three Arbitrators are to be appointed. The Employer shall also choose one Arbitrator from the panel of five and the two so chosen will choose the third arbitrator from the panel only. The Arbitrator(s) shall be appointed within a period of 30 days from the date of receipt of written notice/demand of appointment of Arbitrator from either party. Neither party shall be limited in the proceedings before such arbitrator(s) to the evidence or arguments put before the Engineer for the purpose of obtaining his decision. No decision given by the Engineer in accordance with the foregoing provisions shall disqualify him from being called as a witness and giving evidence before the arbitrator(s) on any matter, whatsoever, relevant to dispute or difference referred to arbitrator/s. The arbitration proceedings shall be held in Delhi only. The language of proceedings that of documents and communication shall be English.
- (b) The Employer at the time of offering the panel of Arbitrator(s) to be appointed as Arbitrator shall also supply the information with regard to the qualifications of the said Arbitrator nominated in the panel along with their professional experience, phone nos. and addresses to the contractor.
- (c) The award of the sole Arbitrator or the award by majority of three Arbitrators as the case may be shall be binding on all parties.”

4. The Respondent will provide a panel of five Arbitrators to the petitioner who will then nominate one Arbitrator from the said panel and the

respondent will nominate his Co-Arbitrator. The two Arbitrators appointed will thereafter appoint a third Arbitrator to constitute the Arbitral Tribunal. This exercise would be completed within a period of one month from today.

5. The learned Arbitrators shall give disclosure under Section 12 of the Act before entering upon reference.

6. Fee of the Arbitrators shall be fixed as per Fourth Schedule of the Act.

7. The petition is allowed, with the consent of the parties, in the aforesaid terms.

JYOTI SINGH, J

DECEMBER 11, 2019
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