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

+ W.P.(C) 2368/2018

LALIT KUMAR GOEL, SOLE PROPRIETOR, GOEL
NCONSTRUCTION CO. Petitioner

Through: Counsel for the petitioner (appearance
not given).

versus

DELHI METRO RAIL CORPORATION LTD. Respondent

Through: Mr Tarun Johri, Advocate for DMRC
with Ms Somya Suman, Assistant
Legal Manager of DMRC.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER
26.03.2019

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1. The petitioner has filed the present petition, *inter alia*, impugning a Circular No.6/2017 issued by the respondent (DMRC) on 26.06.2017. In terms of the impugned circular, DMRC has specified the fee payable to external arbitrators/conciliators. The tabular statement indicating the fee payable to the external arbitrators/conciliators is as under:-

S.No.	Description	Maximum amount payable per external Arbitrator/Conciliator, per case
1.	Arbitration Fee	₹20,000/- per sitting (to be equally shared by both the parties) subject to a maximum of ₹4.00 lakh per

		case. Or ₹6.00 lakhs (lump-sum) subject to publishing the Award within 6 months Or ₹5.00 lakhs (lump sum) subject to publishing the award after 6 months but before 12 months. 1. The amount of fee already paid for the days of hearing @₹20,000/- would be adjusted in the lump-sum payment. 2. The above fee is for hearings, and includes a maximum of 3 internal meetings held at DMRC office by the Arbitral Tribunal for finalization of award without the presence of the parties involved. 3. Each day of hearing will be counted as one sitting. The fee shall be conveyed to Arbitrator(s) at the time of issuing the appointment letter.
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2. The petitioner had entered into a contract with DMRC in June, 2011. The petitioner contends that he is petty contractor and the disputes involved in the claims raised by the petitioner are to the extent of ₹ 20 lakhs. It is in this context, the petitioner has filed the present petition claiming that the arbitrator fee be fixed as per the Scheduled IV to the Arbitration and Conciliation Act, 1996.
3. It is contended on behalf of the petitioner that the impugned circular is

contrary to Schedule IV to the Arbitration and Conciliation Act, 1996 and, therefore, the statutory provisions would prevail.

4. The learned counsel appearing for the DMRC submits that the fee is fixed only for external arbitrator/conciliation and in case the arbitrator/conciliator is an employee of DMRC, no additional amount is payable.

5. He has also referred to Clause 17.11 of the General Conditions of the Contract, which stipulated the fee of the Arbitrator would be fixed by the employer.

6. Clause 17.11 of GCC is set out below:-

“17.11. The cost of arbitration shall be borne by the respective parties. The cost shall, inter alia, include the fees of the Arbitrator(s) as per rates fixed by the Employer from time to time.”

7. It is apparent from the above that in terms of the contract between the parties, the fee of the arbitrator would require to be fixed as per the rates fixed by the employer (DMRC) from time to time.

8. The contention that the fees as specified under Scheduled IV of the Arbitration and Conciliation Act, 1996 would prevail over the contractual terms, is also unpersuasive. The parties are always at liberty to agree on the fee to be paid to the Arbitral Tribunal and Schedule IV of the Act does not fetter the parties from doing so.

9. In view of the above the present petition is unmerited and is dismissed.

VIBHU BAKHRU, J

MARCH 26, 2019/MK