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

+ **ARB.P. 891/2018**

**RISHI RAM**

..... Petitioner

Through: Mr.R.K. Naroola, Mr.Nishant  
Bhargava and Ms.Anoushka Singh,  
Advs.

versus

**M/S TDI INFRASTRURE LTD & ORS.**

..... Respondents

Through: Mr.Anil Sapra, Sr. Adv.with  
Ms.Akanaksha Choudhary and  
Mr.Sarthak Katyal, Advs.

**CORAM:**

**HON'BLE MR. JUSTICE NAVIN CHAWLA**

**ORDER**

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**22.02.2019**

**I.A.No. 2770/2019 (Delay)**

For the reasons stated in the application, the delay is condoned and application stands allowed. Reply is taken on record.

**ARB.P. 891/2018**

1. This petition has been filed under Section 11 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as the 'Act') seeking appointment of an Arbitrator for adjudicating the disputes that have arisen between the parties in relation to the Work Order dated 01.09.2013 issued by the respondent no. 1 in favour of the petitioner with respect to the Civil and Structure Work on the basis of Covered Area Labour Rates for the construction of 165 Nos. Independent Tuscan Floors (G+4+Penthouse) at Tuscan City Kundli, Sonapat, Haryana.

2. The said Agreement contains an Arbitration Agreement, which is reproduced hereinbelow:

*“ARBITRATION : The CONTRACTOR shall keep EMPLOYER indemnified against all fines , penalties, losses or damages etc. arising out of his non compliance . Any disputes / controversies in this respect will have to be met with by the CONTRACTOR at his own cost . The CONTRACTOR shall show proof of his compliance to the TDI and it has been mutually agreed sole arbitrator for all dispute or difference finally decided by Chairman & Managing Director of TDI. In case of non settlement of dispute, action and proceeding arising out of the Contract the same shall be governed & decided as per Indian arbitration cancellation act 1996 with up to date amendments”*

3. The disputes having arisen between the parties, the petitioner invoked the Arbitration Agreement by his legal notice dated 27.09.2018. Having received no response from the respondent, the present petition was filed.

4. Learned senior counsel for the respondents submits that the disputes raised by the petitioner, which are for payment of the bills for the alleged work done, cannot be referred to arbitration as the Arbitration Agreement does not apply to such disputes. He submits that under the Arbitration Agreement as quoted hereinabove, it is only the disputes wherein the respondents have to claim indemnification of any fines, penalties, losses or damages from the petitioner that can be referred to arbitration.

I am unable to agree with the said submission of learned senior counsel for the respondents. The Arbitration Agreement as quoted hereinabove has two parts; while the first part deals with the disputes relating to the claim of the respondent of indemnification against the petitioner for all fines, penalties, losses or damages etc. arising out of any non compliance by the petitioner, the second part of the same deals with case of non settlement of disputes,

action and proceedings arising out of the contract. In my view, therefore, the Arbitration Agreement would apply even to the claim raised by the petitioner.

6. Learned senior counsel for the respondents further submits that that the claims raised by the petitioner are even otherwise barred by the law of limitation. In my view this is a plea to be taken before the Arbitrator, who may decide the same, if so advised, even as a preliminary issue.

7. In view of the above, I see no impediment for appointing an Arbitrator for adjudicating the disputes that have arisen between the parties in relation to the abovementioned Agreement. I appoint **Mr.N.P. Kaushik**, Retired Additional District & Sessions Judge, Delhi (C-35, Surajmal Vihar, Delhi-110092, Mobile: 9910384663) as a Sole Arbitrator for adjudicating the disputes between the parties.

8. The Arbitrator shall give disclosure in terms of Section 12 of the Act before proceeding with the reference.

9. In the arbitration proceedings the respondents shall be entitled to raise any counter claim apart from raising all pleas on merits.

10. The petition is allowed in the above terms, with no order as to cost.

*Dasti.*

**NAVIN CHAWLA, J**

**FEBRUARY 22, 2019/Arya**