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

+ **ARB.P. 282/2019**

MDP INFRA (INDIA) PVT.LTD

..... Petitioner

Through: Mr. Ametaj Kumar Nagar, Adv. with
Mr. Shivansh, Adv.

versus

SHRI RAM COLLEGE OF COMMERCE

..... Respondent

Through: Mr. Amit Bansal, Adv. with
Ms. Manisha Singh, Adv.

CORAM:

HON'BLE MR. JUSTICE V. KAMESWAR RAO

ORDER

% **17.02.2020**

1. This is a petition under Section 11(6) of the Arbitration and Conciliation Act, 1996 for appointment of an Arbitrator. The relevant arbitration clause in the Agreement reads as under:-

53. ARBITRATION

All dispute and differences of any kind whatever arising out of or in connection with the Contract or the carrying out of the works (whether during the progress of the works or after their completion and whether before or after the determination, abandonment or breach of the Contract) shall be referred to and settled by the Architect who shall state his decision in writing. Such decision may be in the form of a Final Certificate or otherwise. The decision of the Architect with respect of any of the excepted matters shall be final and without appeal. But if either the Owner or the Contractor be dissatisfied with the decision of the Architect on any matter, question or dispute of any kind (except any of the excepted matters) or as to the

withholding by title Architect of any certificate to which the Contractor may claim to be entitled then and in any such case either party (the Owner or the Contractor) may with 28 days after receiving notice of such decision give a written notice to the other party through the architect requiring that such matters in dispute be" Arbitrated upon. Such written note shall specify the matters which are in dispute together with the amount or amount claimed in respect of such dispute or difference of which such written notice has been given and no other shall be and is hereby referred to the Arbitration and final decision of a single Arbitrator being a Qualified Engineer/ Architect to be agreed upon and appointed by both the parties or in case of disagreement as to the appointment of a single Arbitrators to the Arbitration then the Arbitrations of two Arbitrators both being a Qualified Engineer/ Architect one to be appointed by each party, which Arbitrators shall before taking upon themselves the burden of reference appoint an Umpire.

The Arbitrator, the Arbitrators or the Umpire as the case may be shall have power to open up review and revise any certificate, opinion, decision, requisition or notice save in regard to the excepted matters referred to in clause 52 determine all matters in dispute which shall be submitted to him or them and of which notice shall have been given as aforesaid.

Except where otherwise provided in the contract all questions and disputes relating to the meaning of the specifications designs, drawings and instructions herein before mentioned and as to the quality or workmanship or materials used on the work or as to any other question, claim, right, matter or thing whatsoever in any way arising out of or relating to the contract, designs, 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 progress of the work or after the completion of, abandonment thereof shall be referred to the sole arbitration of the person appointed by the OWNER.

The Arbitrator to whom the matter is originally referred being transferred or vacating his office or being unable to act for any reason then The Owner at the time of such transfer, vacation of office or inability to act, shall appoint another person to act as Arbitrator in accordance with the terms of the contract. Such person shall be entitled to proceed with the reference from the stage at which his predecessor left it.

Subject as aforesaid the provisions of the latest Arbitration and conciliation Act or any statutory modification or re-enactment thereof and the rules made thereunder and for the time being in force shall apply to the arbitration proceeding under this clause. It is also a term of the contract that the party invoking arbitration shall specify the dispute or disputes to be referred to arbitration under this clause together with the amount or amounts claimed in respect of each such dispute.

It is also a term of the contract that if the Contractor(s) do/does not make any demand for arbitration in respect of any claim (s) in writing within 90 days of receiving the intimation from the OWNER that the final bill is ready for payment the claim of the Contractor (s) will be deemed to have been waived and absolutely barred and the Owner shall be discharged and released of all liabilities under the contract in respect of these claims. The Arbitrator shall give a reasoned award if the amount of award is more than Rs. 50,000/-."

2. There is no dispute that the arbitration clause was invoked by the petitioner.
3. I have seen the reply sent by the respondent to the invocation notice dated October 26, 2018, which is at page 327. From a perusal of the same, the respondent is disputing the claim made by the petitioner, on merit.
4. As there is a dispute between the parties related to construction contract, appropriate shall be to allow this petition and appoint an Arbitrator, who shall adjudicate the disputes and differences between the parties.

Accordingly, this Court appoints Mr. P. Krishnan (Mob. No.9818276327), Former Addl. Director General, CPWD, 103, Charak Sadan, Vikas Puri, Delhi-1100018, as an Arbitrator. His appointment shall be governed by the Rules of DIAC.

5. Parties shall be at liberty to appear before Mr. P. Krishnan, after taking a prior appointment on the aforesaid mobile number.

6. Petition is disposed of.

7. Copy of this order be sent to the learned Arbitrator for information.

Dasti.

V. KAMESWAR RAO, J

FEBRUARY 17, 2020/ak