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

% ***Date of decision: 07.12.2021***

+ **ARB.P. 784/2021**

SIMPLEX INFRASTRUCTURES LIMITED Petitioner

Through Mr. Kirti Uppal, Sr. Adv. with Mr.
Ayush Aggarwala, Mr. Samrat
Sengupta, Ms. Riya Gulati and Mr.
Ishan Thakur, Advs.,

versus

**DIRECTOR GENERAL MARRIED ACCOMMODATION
PROJECT** Respondent

Through Mr. Harish Vaidyanathan Shankar,
CGSC with Mr. Karan Chhibber and
Ms. S. Bushra Kazim, Advs.

**CORAM:
HON'BLE MR. JUSTICE SURESH KUMAR KAIT**

J U D G M E N T (oral)

1. The present petition has been filed under Section 11 of the Arbitration and Conciliation Act, 1996 seeking appointment of sole Arbitrator to adjudicate the disputes with respondent in terms of Clause 60 of the General Conditions of Contracts for Lumpsum contracts and measurement contracts entered into between the parties.

2. Petitioner is a company established in 1924 and is in business of executing projects in several sectors like Transport, Energy & Power,

Mining, Buildings, Marine, Industrial Structures and Real Estate.

3. Respondent is Director General, Married Accommodation Project of the Ministry of Defence and works under the aegis of the Engineer in chief and has been entrusted with the task of constructing accommodation for Married Personnel of the Armed Forces.

4. As per the averments made in the present petition, respondent issued a tender for construction of residential accommodation for Army and Air Force at Lucknow, Fatehgarh and Memaura on 28.06.2010. Petitioner submitted its bid on 07.09.2010 for a lump-sum price of Rs.176,52,21,231/-. By way of a separate letter, it also offered the respondent a rebate of 14% on such quoted sum. Respondent issued a letter dated 16.09.2010 regarding reviewing the rates quoted by the petitioner as it deemed the same to be high. Thereafter, petitioner replied on 20.09.2010 that the rates were already quite competitive and reducing it further was not possible. However, the revised rates for certain sections were submitted to the respondent. Eventually, the petitioner's bid was accepted and it was awarded the Project on 21.09.2010 for the price of Rs.151,80,90,258.86/- after applying the rebate of 14% offered by the petitioner. Pursuant to the same, parties executed the Contract Documents. Subsequent to issuance of Letter of

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Award and upon execution of the said agreement, the petitioner had commenced mobilizing its equipment, funds and resources on the work site. However, due to the various breaches and the disregard of the express terms of the Contracts, as well as poor planning and management by the respondent, the petitioner suffered significant time overrun as well as additional costs and losses inter alia relating to increased overheads, interest, unforeseen costs and unforeseen escalations attributable solely to the unnatural prolongation of the contract periods but still completed 98% of the works under the contract. Petitioner was accordingly compelled to invoke Arbitration clause contained in Clause 60 of the General Conditions of Contracts for lump-sum contracts and measurement contracts vide Letter dated 12.06.2021 for adjudication of its claims and nominated its arbitrator to decide the disputes and differences between the parties. However, the respondent failed to appoint an arbitrator or show any cooperation for settlement of dispute. Hence, the present petition has been filed.

5. Learned CGSC appearing on behalf of respondent submit that though the averments made in the present petition are disputed, however, he has no objection if sole Arbitrator is appointed by this Court for adjudication of dispute between the parties.

6. In view of the above, the present petition is allowed. Accordingly, **Justice KG Balakrishnan, former Chief Justice of India (Mobile:9717266700)** is appointed sole Arbitrator to adjudicate the dispute between the parties.

7. The fee of the learned Arbitrator shall be governed by the Fourth Schedule of the Arbitration and Conciliation Act, 1996.

8. The learned Arbitrator shall ensure compliance of Section 12 of Arbitration and Conciliation Act, 1996 before commencing the arbitration.

9. The present petition stands disposed of accordingly.

10. A copy of this order be sent to the learned Arbitrator for information.

(SURESH KUMAR KAIT)
JUDGE

DECEMBER 07, 2021
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