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

% ***Date of decision: 09.12.2021***

+ ARB.P. 1092/2021

**RAJENDRA MITTAL CONSTRUCTION CO
PVT LTD**

..... Petitioner

Through Mr. Sandeep Bajaj, Ms. Aakanksha
Nehra and Mr. Siddhartha Shukla,
Advocates

versus

NCML BATALA PVT LTD

..... Respondent

Through Mr. Vishal Bhatnagar, Ms. Lata and
Mr. Ishu Manaksiya, Advs.

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

JUDGMENT (oral)

1. The present petition has been filed under Section 11 (6) of the Arbitration and Conciliation Act, 1996 seeking appointment of Arbitrator on behalf of respondent to adjudicate the disputes with respondent.

2. Petitioner was awarded construction of civil and associated works for proposed Silos Complex at Batala by respondent vide Tender document bearing No.NCML/BATALA/CIVIL/2017-18/04 dated 28.02.2018 and subsequently through a Contract Agreement dated 14.05.2018, 30.08.2019 and 08.09.2020 to be completed in a time frame of 8 months. Respondent

failed to provide land and other miscellaneous support, due to which the petitioner was unable to execute the work, therefore, the project is running onto its 40th Month.

3. According to petitioner, due to failure of the obligations of respondent, petitioner issued the Termination Notice cum Notice invoking Arbitration dated 30.09.2021 whereby the petitioner terminated the Contract and nominated its Arbitrator, namely, Justice S.P. Garg, (Retd.) and upon receipt of the said notice, respondent replied vide its reply dated 28.10.2021 refuting the contentions of the petitioner, however, in its reply neither respondent denied the existence of the Arbitration Agreement nor nominated its Arbitrator. Therefore, the present petition has been filed by petitioner to nominate Arbitrator on part of respondent in terms of Clause 62 ("Arbitration Clause") forming a part of the Contract dated 14.05.2018 as executed between the parties.

4. During hearing, learned counsel for petitioner prays that sole Arbitrator may be appointed through DIAC to adjudicate the dispute between the parties.

5. Learned counsel for respondent has not objected to the appointment of sole Arbitrator for adjudication of dispute between the parties.

6. In view of the above and with the consent of parties, the present petition is allowed. Accordingly, **Mr. Justice (Retd.) J.R. Midha (Mobile: 9717495003)** is appointed sole Arbitrator in this petition to adjudicate the dispute between the parties.

7. The arbitration shall be conducted under the Delhi International Arbitration Centre (DIAC). The fee of the Arbitrator shall be in accordance with the schedule of fees prescribed under the Delhi International Arbitration Centre (Administrative Cost and Arbitrators' Fees) Rules, 2018.

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 09, 2021

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