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

+ ARB.P. 35/2024

M/S BANSAL CONSTRUCTION CO. Petitioner

Through: Ms. Pooja Dua, Advocate.

versus

UNION OF INDIA

..... Respondent

Through: Mr. Amit Gupta, SPC with Ms.
Perna Dhall, GP, Advocates with
Ms. Seemaa Garg.

CORAM:

HON'BLE MR. JUSTICE PRATEEK JALAN

ORDER

% **11.01.2024**

I.A. 669/2024 (for exemption)

Exemption allowed, subject to all just exceptions.

The application stands disposed of.

ARB.P. 35/2024

1. The petitioner has filed this petition under Section 11 of the Arbitration and Conciliation Act, 1996 [“the Act”] for appointment of an arbitrator to adjudicate the claim arising out of an agreement dated 12.04.2012 for construction work.
2. The agreement contains an arbitration clause by incorporation of Clause 64 of General Conditions of Contract.
3. The arbitration clause was first invoked by the petitioner by notice dated 08.06.2016 pursuant to which arbitration proceedings were held, which culminated in an award dated 12.07.2018. The award was challenged by the petitioner under Section 34 of the Act in O.M.P.(COMM.) 47/2018 before the District Judge, Commercial Court,



Patiala House Court, New Delhi. The learned Commercial Court, by a judgment dated 30.09.2021, allowed the challenge with respect to the award on claim No. 1 which relates to payment under the Price Variation Clause.

4. In these circumstances, the petitioner seeks fresh adjudication of claim No. 1. It sent a notice dated 31.07.2023 to the respondent. The petitioner also sent several reminders to the respondent, but the respondent has not acceded to the appointment.

5. Mr. Amit Gupta, learned counsel for the respondent, appears on advance notice, and does not object to the appointment of an arbitrator.

6. For the aforesaid reasons, the petition is allowed and the dispute raised by the petitioner with regard to payment under the Price Variation Clause and consequential reliefs are referred to arbitration under the aegis of Delhi International Arbitration Centre, Delhi High Court, Shershah Road, New Delhi [“DIAC”]. DIAC is requested to nominate an arbitrator from its panel. The proceedings will be governed by the Rules of DIAC, including as to remuneration of the learned Arbitrator.

7. The learned Arbitrator is requested to furnish a declaration under Section 12 of the Act, prior to entering upon the reference.

8. It is made clear that this Court has not adjudicated the rights and contentions of parties which are left open for adjudication by the learned arbitrator.

9. The petition stands disposed of with these directions.

PRATEEK JALAN, J

JANUARY 11, 2024/“Bhupi”/