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

+ **ARB.P. 1344/2024**

M/S DESIGN ASSOCIATES INC.

.....Petitioner

Through: Mr. Arjun Dewan, Mr. Arjun
Mukherjee, Mr. Akash Arora & Ms.
Aashtha Agnihotri, Advocates

versus

EMPLOYEES STATE INSURANCE CORPORATION

.....Respondent

Through: Mr. Shlok Chandra Standing Counsel
for ESIC, Mr. Sankalp Sharma, Mr
Sushant Pandey, Advocates.

CORAM:

HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

ORDER

23.10.2024

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1. The Petitioner has approached this Court by filing the instant petition under Section 11(6) of the Arbitration & Conciliation Act, 1996 for appointment of an Arbitrator to adjudicate the disputes that has arisen between the parties under the Contract Agreement bearing No.72/ESIC/Design/2008-09 dated 17.03.2009 (*hereafter referred to as "Contract No.1"*) and Contract bearing No.W-11/12/M.C.-fbd/Gas Kit etc./Design (NMF-fbd/2011-PMD) dated 08.06.2012 (*hereafter referred to as "Contract No.2"*) entered into between the parties. The purport of the said Contracts was to engage the Petitioner for providing Architectural Services in relation to ESI Hospital Campus at Faridabad, Haryana.



2. Disputes have arisen between the parties. Material on record indicates that a notice invoking arbitration under Section 21 of the Arbitration and Conciliation Act, 1996 was sent by the Petitioner to the Respondents on 04.05.2024. Since, the Arbitrator could not be appointed, the Petitioner has approached this Court by filing the present petition for appointment of an Arbitrator.

3. There is an arbitration clause in the contracts. Clause 8 of the Contract No.1 is an arbitration clause and the Contract No.2 incorporates the Arbitration Clause inasmuch as Contract No.1 is incorporated in the Contract No.2. Clause 8 of Contract No.1 reads as under:

“Clause 8. Settlement of Disputes

8.1 Amicable Settlement-

If either Party objects to any action or inaction of the other Party, the Objecting Party may file a written Notice to the other party providing in detail the basis of the dispute. The Party receiving the Notice of Dispute will consider it and respond in writing within 14 days after receipt. If that Party fails to respond within 14 days, or the dispute cannot be amicably settled within 14 days following the response of that Party, Clause GC 8.2 shall apply.

8.2 Dispute Resolution-

Any dispute between the Parties as to matters arising pursuant to this Contract that cannot be settled amicably according to Clause GC 8.1 may be submitted by either Party for settlement in accordance with the provisions specified in the SC.”

“Special Conditions of Contract:



Clause 8.2 ‘Dispute Resolution’

Any dispute or difference whatsoever arising between the parties out of or relating to construction, meaning, scope, operation or effect of this contract or the validity or the breach thereof shall be settled by arbitration. The sole Arbitrator to be selected by the Director General ESIC within 30 days from the date of receipt of notice of arbitration. The venue of arbitration shall be at New Delhi. The arbitration proceedings shall be governed by the Arbitration and Conciliation Act, 1996 or any statutory modification thereof.”

4. A perusal of the above discloses that disputes shall be resolved in two stages, first being through the amicable settlement and failing which the matter shall be referred to arbitration.
5. In view of the fact that disputes have arisen between the parties and there is an arbitration clause in the Contract, this Court is inclined to refer the matter to Delhi International Arbitration Centre (DIAC).
6. Accordingly, Mr. Abhilash Mathur, Advocate (Mob. No.9811041536) is appointed as a Sole Arbitrator to adjudicate upon the disputes between the parties.
7. The arbitration would take place under the aegis of the Delhi International Arbitration Centre (DIAC) and would abide by its rules and regulations. The learned Arbitrator shall be entitled to fees as per the Schedule of Fees maintained by the DIAC.
8. The learned Arbitrator is also requested to file the requisite disclosure under Section 12(2) of the 1996 Act within a week of entering on reference.
9. All rights and contentions of the parties in relation to the



claims/counter-claims are kept open, to be decided by the learned Arbitrator on their merits, in accordance with law.

10. Needless to say, nothing in this order shall be construed as an expression of this Court on the merits of the contentions of the parties.

11. The present petition stands disposed of in the above terms along with pending application(s), if any.

SUBRAMONIUM PRASAD, J

OCTOBER 23, 2024

RJ