

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **Arb.P.No.438/2007**
% **Date of Decision: February 29, 2008**

M/s Jai & Company Petitioner
! Through: Ms. Saroj Bidawat, Advocate
Versus
\$ Uttar Pradesh Rajkiya Nirman Nigam Ltd. & Anr.
.....Respondents
^ Through: Mr. Rajesh Pathak, Advocate

CORAM:

HON'BLE MR. JUSTICE S.N. AGGARWAL

1. Whether reporters of Local paper may be allowed to see the judgment?
2. To be referred to the reporter or not?
3. Whether the judgment should be reported in the Digest?

S.N.AGGARWAL, J (ORAL)

The petitioner has filed this petition against the respondents seeking appointment of an arbitrator under Section 11 of the Arbitration and Conciliation Act, 1996.

2 Briefly stated the facts of the case are as follow:-

The Border Security Force (hereinafter to be referred as the

'BSF') had awarded a contract to respondent No. 1 for construction of a school building at its Campus at Jalalabad, Firrozpur (Punjab). Respondent No. 1 in turn had awarded a sub-contract to the petitioner for execution of certain works in relation to construction of the school building vide work order No. 178-A/WP-06/RNN/04 dated 24.07.2003.

3 After the work was completed by the petitioner, certain disputes and differences arose between the parties regarding the payment claimed by the petitioner under the aforementioned work order.

4 Mr Pathak appearing on behalf of the respondents has not disputed the existence of the arbitration agreement in the work order dated 24.07.2003 awarded by respondent No. 1 to the petitioner and he has also not disputed that the disputes and differences have arisen between the parties under the said work order which are required to be adjudicated through the process of arbitration. The contention of Mr. Pathak appearing on behalf of the respondents is that the present petition has become infructuous since the arbitrator has already been appointed by the respondents in terms of arbitration agreement between the parties. This contention is of no consequence in view of judgments of the Hon'ble Supreme Court in **ACE Pipeline Contracts (P) Ltd. Vs.**

Bharat Petroleum Corporation Ltd. (2007) 5 SCC 304 and ***Union of India Vs. Bharat Battery Manufacturing Co. (P) Ltd. (2007) 7 SCC 684*** because the respondents have lost their right to appoint an arbitrator of their choice after filing of the petition seeking appointment of arbitrator by the aggrieved party.

5 In view of the above and having regard to the facts and circumstances of the case and the submissions made by the learned counsel for the parties, Mr. D.S. Paweriya, former Additional District & Sessions Judge (Mobile No. 9810433390, Chamber No. 49, Tehsil Building, Tis Hazari, Delhi-110054) is hereby appointed as the sole arbitrator for adjudicating the disputes and differences between the parties under the work order dated 05.05.2004. The fee of the learned arbitrator is fixed at Rs. 25,000/- to be shared equally by both the parties. The parties are directed to appear before the learned Arbitrator for further directions at 4.00 P.M. on 7.3.2008.

6 A copy of this order be sent to the learned arbitrator forthwith for information.

7 The present petition stands disposed of accordingly.

February 29, 2008
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S.N.AGGARWAL
[JUDGE]