

\$~1

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

+ **ARB.P. 345/2016**

RSV BUILDERS PRIVATE LIMITED Petitioner
Through: Mr Mayank Mikhail Mukherjee,
Advocates.

versus

**SGT MEDICAL COLLEGE, HOSPITAL AND
RESEARCH INSTITUTE** Respondent
Through: Mr Samrat Nigam, Mr Vijayender
Kumar and Mr Siddharth Bhatia,
Advocates.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER

% **09.11.2016**

1. The petitioner has filed the present petition under Section 11 of the Arbitration and Conciliation Act, 1996 (hereafter 'the Act'), *inter alia*, praying that an Arbitrator be appointed for adjudicating of the disputes that have arisen between the parties in relation to an agreement of September, 2009. The said agreement was entered into between the parties for construction of an academic block at medical campus in village Budhera, Gurgaon.

2. The said agreement includes an arbitration clause which is set as below:-

"In case of dispute on any matter at any time, the combined decision of the Architect/Owner shall be final and binding on the contractor. However if it cannot be resolved amicably in the said manner, the matter may be referred to arbitrator acceptable to both the employer and the contractor and the

decision of such arbitrator shall be final and acceptable to the contractor. The jurisdiction of court will be Delhi / New Delhi.”

3. The learned counsel appearing for the respondent does not dispute the existence of the said agreement or the arbitration clause. He, however, submits that the parties have not formally endeavoured to amicably settle the disputes and therefore, the present petition is premature. In addition, he submits that the claims made by the petitioner are barred by limitation. He states that the date for completion of phase-I was 31.03.2010 and according to the petitioner, the project was completed within time. He earnestly contended that the first communication received by respondent from the petitioner was on 07.05.2015, which was much beyond the period of limitation and the arbitration clause was invoked only as late as 11.04.2016.

4. The contention whether parties have not endeavoured to amicably resolve the disputes, cannot be readily accepted. The documents produced by the petitioner on record include several communications, which indicate that certain meetings were held between the parties for settling the disputes. However, admittedly, the same have not been resolved as yet. Although, the dispute resolution clause required the parties to amicably resolve their disputes in the first instance, there is no requirement that efforts to resolve the dispute must be in the form of a formal mediation; once it is clear that the parties have endeavoured to resolve their disputes but have failed to do so, they would be at liberty to insist that the disputes be referred to arbitration.

5. Insofar as the question whether the claims made by the petitioner are

barred by limitation is concerned, the said question is not required to be examined by this Court at this stage. In terms of Section 11(6A) of the Act, introduced by the Arbitration and Conciliation (Amendment) Act, 2015, the examination before this Court is only confined to the existence of the arbitration clause, which is not disputed in this case. Needless to mention that the respondent would be at liberty to urge the issue of limitation before the Arbitrator.

6. In view of the above, a Sole Arbitrator is required to be appointed. Accordingly, it is directed that an Arbitrator be appointed under the Rules of the Delhi International Arbitration Centre (DIAC). The representatives of the parties shall appear before the Co-ordinator, DIAC on 02.12.2016 at 11:00 AM. The arbitration shall be conducted under the aegis of DIAC and in accordance with its Rules.

7. The petition is disposed of.

VIBHU BAKHRU, J

NOVEMBER 09, 2016
RK