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

+ **ARB.P. 420/2016**

**BAWANA INFRA DEVELOPMENT PRIVATE LIMITED**

..... Petitioner

Through : Dr Amit George & Ms Rajsree Ajay,  
Adv for non-applicant/petitioner.

versus

**DELHI STATE INDUSTRIAL INFRASTRUCTURE  
DEVELOPMENT CORPORATION LIMITED**

..... Respondent

Through : Mr Moni Cinmoy, Adv/applicant.

**CORAM:**

**HON'BLE MR. JUSTICE VIBHU BAKHRU**

**ORDER**

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**21.09.2016**

**IA No.11674/2016**

Allowed, subject to all just exceptions.

The application is disposed of.

**REVIEW PET. 415/2016**

1. The respondent has filed this review petition, *inter alia*, alleging that the petitioner has secured the order dated 24.08.2016 by suppressing material facts.

2. The applicant states that two vital facts were suppressed by the petitioner. First, the letter dated 21.07.2016 issued by the arbitrator, which had not been disclosed; and second, the petitioner failed to disclose that it had not followed the procedure as required under clause no.19.2 of the agreement.

3. In so far as the first allegation is concerned, the respondent had

appointed the arbitrator after the petition had been filed. On 24.08.2016, the learned counsel for the petitioner had mentioned the aforesaid fact and arguments were heard on the aforesaid basis. In this view, the allegation that there was any suppression on the part of the petitioner is wholly unwarranted.

4. The second submission that it was mandatory for the petitioner to take recourse to clause 19.2 of the Agreement before appointing the arbitrator is also bereft of any merit. The relevant clause reads as under:-

**“Section 19.2 Assistance of Expert**

a) The Parties may, in appropriate cases agree to refer the matter to an Expert appointed by them with mutual consent. The parties agree to abide by the decision/ opinion of the Expert. The cost of obtaining the service of the Expert shall be shared equally between the Parties.”

5. A plain reading of clause 19.2 indicates that it is not mandatory to appoint an expert and it is only in appropriate cases that the parties may agree to refer the matter to an expert.

6. It is also difficult to appreciate as to how the review petitioner can make a grievance of non adherence to clause 19.2 of the Agreement, considering that it is the review petitioner's case that it has appointed an arbitrator in accordance with the agreement.

6.1 In view of the aforesaid, none of two contentions advanced by the applicant are merited. However, more importantly, the order dated 24.08.2016 was passed after the respondent had been heard at

length. No such objections were advanced by the respondent on the said date. On the contrary, it was conceded that in view of the decision of the Supreme Court in *Datar Switchgear Ltd v. Tata Finance Ltd*: (2000) 8 SCC 151, the review petitioner had forfeited its right to appoint the arbitrator.

7. In view of the aforesaid position, the question of an arbitrator being appointed after the petition had been filed did not arise. It is seen from the review petition that the applicant has also taken a ground that both the arbitrators cannot proceed simultaneously.

8. Plainly, the review petitioner has misunderstood the present situation. Having come to the conclusion that the review petitioner/respondent had forfeited its right to appoint the arbitrator, the question of the arbitrator so appointed continuing with any proceedings is wholly erroneous. Mr S B Jhamb, the arbitrator appointed by the respondent has no jurisdiction to proceed in the matter.

9. In view of above, the Review Petition is dismissed.

**VIBHU BAKHRU, J**

**SEPTEMBER 21, 2016**

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