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

+ **ARB.P. 508/2016**

LLOYD INSULATIONS INDIA LIMITED Petitioner

Through Mr Praveen Marahatta and Ms Nidhi C.
Sharma, Advocates.

versus

ESTEEM PROJECTS PRIVATE LIMITED Respondent

Through Mr Ginny J Rautray, Mr Parul Mandoi
and Mr Anushka Ashok, Advocates.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER

% **16.12.2016**

1. The petitioner has filed the present petition under Section 11 of the Arbitration and Conciliation Act, 1996 (hereafter 'the Act') to adjudicate the disputes that have arisen between the parties in connection with the Purchase Orders - three in number - all dated 06.09.2008.
2. The General Conditions of the Contract forming a part of the Purchase Orders includes an arbitration clause which is similarly worded and is set out below:-

"12. Arbitration:

Unless otherwise specified in all cases of dispute which cannot be settled by mutual negotiations, the matter shall be referred for arbitration in accordance with the Arbitration Act or any statutory modification or re-enactment thereof for the time being in force. Work under the contract shall be continued by Lloyd during arbitration proceedings unless otherwise directed in writing by ESTEEM. All disputes shall

be subject to the sole jurisdiction of Delhi courts only irrespective of the fact that any other court has concurrent jurisdiction over the matter.”

3. The learned counsel appearing for the respondent does not dispute the existence of the Purchase Orders or the arbitration clause. She, however, submits that the claims made by the petitioner are hopelessly barred by limitation. She has drawn the attention of this court to paragraph No. 13 of the petition which indicates that the works in question were completed on 28.03.2010. She submits that petitioner’s request for arbitration was made on 20.01.2016 which is beyond the period of three years from the date of completion of the works.

4. The learned counsel appearing for the petitioner disputes the aforesaid contention. He contends that the respondent has played a fraud on the petitioner and had deducted liquidated damages on the ground that such damages were likely to be imposed by the main contractor (BRPL). He submits that subsequently, the petitioner became aware that no liquidated damages had been imposed by BRPL.

5. At this stage, it is not necessary to examine the rival contentions raised by the parties and the parties would be liberty to raise the same before the Arbitrator. Since it is not disputed that an arbitration clause exists between the parties, the disputes have to be considered by an arbitral tribunal.

6. Accordingly, with the consent of the counsel for the parties, 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 09.01.2017 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

DECEMBER 16, 2016

pkv