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

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**ARB.P. 544/2015**

**KKG BOREWELLS**

..... Petitioner

Through: Mr. Santosh K. Rout and Mr. Dhananjay  
Prasad, Advocates

versus

**THE EMBASSY OF THE REPUBLIC OF KOREA**

..... Respondent

Through: Mr. Mobin Akhtar, proxy counsel for Mr.  
Sheikh Imran Alam, Advocate

**CORAM: JUSTICE S. MURALIDHAR**

**ORDER**

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**03.11.2016**

1. On the last date i.e., 14<sup>th</sup> September, 2016, learned counsel for the Respondent informed the Court that the reply is ready and he would be filing the same within a week. Subject to further costs of Rs.10,000/- the Court permitted reply to be filed within a week from that day.

2. It must be understood that the above direction was issued in the context of the fact that although notice in the present petition was issued on 16<sup>th</sup> October, 2015 and time was sought by the Respondent on 10<sup>th</sup> December, 2015 to file a reply within four weeks, no reply was filed by 29<sup>th</sup> March, 2016.

3. The order dated 29<sup>th</sup> March, 2016 passed by this Court is worth reproducing and reads thus:

"Learned counsel for the respondent states that the respondent has already made the entire payment to the petitioner. There is no live dispute in the matter. The original documents are in Korea. Therefore, some time is required to file the reply. The request is strongly opposed by the learned counsel for the petitioner who submits that despite of last opportunity, reply has not been filed. In view of the peculiar facts and circumstances of the case, the reply in the matter is necessary. One final opportunity is granted to the respondent to file the reply along with original documents within six weeks, subject to cost of Rs. 10,000/- to be paid to the petitioner. List on 11<sup>th</sup> May, 2016."

4. Thereafter on 11th May 2016 the Court found that no reply had been filed and passed the following order:

"Reply has not been filed by the respondent. Even, the cost is not paid. Further cost of Rs.10,000/- is imposed upon the respondent which shall be paid to the petitioner. One final opportunity is granted to the respondent to file the reply within two weeks. As regards the earlier cost, the learned counsel for the respondent undertakes to pay the same within one week from today. List on 21<sup>st</sup> July, 2016."

5. The case was heard thereafter on 14th September 2016, when the following order was passed:

"Cost has been paid. However, no reply has been filed. Counsel for the respondent states that the reply is ready and he would be filing the same within a week. Subject to further cost of Rs. 10,000/- reply be filed within a week from today. Rejoinder thereto be filed within two weeks thereafter. List on 3rd November, 2016."

6. Thus it is seen that time was granted to the Respondent on 29<sup>th</sup> March 2016, 11<sup>th</sup> May, 2016 and 14th September 2016 to file reply subject to payment of costs. And yet, today neither the costs as ordered on 14th September 2016 have been paid nor the reply has been filed.

7. Learned proxy counsel appearing on behalf of the counsel for the Respondent states that the reply is ready and will be filed during the course of the day and that the cost will be paid before the next date. He further states that the main counsel for the Respondent is in some personal difficulty today and, therefore, is unable to appear. He, accordingly, seeks an adjournment.

8. Given the above history of the case, the request for one more adjournment on behalf of the Respondent is unreasonable. The Court could still have considered the request had the Respondent paid the costs in terms of the order dated 14<sup>th</sup> September, 2016 and also filed its reply. That not being the case, the Court is not inclined to adjourn the case any further.

9. The Court then enquired of the proxy counsel as to the objection that the Respondent has to the appointment of an arbitrator. Learned counsel for the Petitioner offered the same response as was noted in the order dated 29<sup>th</sup> March, 2016 viz., that the entire payment due to the Petitioner has already been made by the Respondent. Whether the Petitioner is entitled to any amount is a question that has to be decided by the learned arbitrator.

10. There is no denial as on date by the Respondent about the existence of an arbitration clause in the work order dated 4<sup>th</sup> October, 2012 issued to the Petitioner by the Respondent. Further the fact that the Petitioner invoked the said arbitration clause and issued a legal demand notice dated 9th February 2015 to the Respondent is also not denied.

11. In the circumstances, the Court appoints Mr. Satyakam, Advocate (Mobile No. 9868219633) as sole Arbitrator to adjudicate the disputes

between the parties including their claims and counter-claims. The arbitration shall take place under the aegis of the Delhi International Arbitration Centre ('DAC'). The fees of the learned Arbitrator will be in terms of the Delhi High Court Arbitration Centre (Arbitrators' Fees) Rules.

12. The petition and the applications are disposed of. A copy of this order be communicated to Mr. Satyakam as well as Additional Coordinator, DAC forthwith.

**S. MURALIDHAR, J**

**NOVEMBER 03, 2016**  
**RS**