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

+ ARB.P. 586/2015

M/S RAJ KUMAR TRADING COMPANY Petitioner
Through Mr.Rajat Bhardwaj, Adv. with
Mr.Pardeep Jatav, Adv.

versus

THE CONTROLLER OF PUBLICATION (ADMIN.)..... Respondent
Through Mr.Sanjib K. Mohanty, Sr. Panel
Counsel

CORAM:

HON'BLE MR. JUSTICE MANMOHAN SINGH

ORDER

% **30.03.2016**

The present petition has been filed by the petitioner under Section 11 of the Arbitration and Conciliation Act, 1996 for appointment of an Arbitrator.

Brief facts of the case are that the respondent invited tender for waste paper of "A" and "B" category vide notification dated 11th February, 2014 wherein the petitioner also participated. The petitioner was awarded tender vide award letter dated 23rd June, 2014 for lifting of waste paper of category "A" only.

It is stated in the petition that the petitioner raised objections stating that tender was awarded after expiry of 90 days period. The tender was invited as a one single lot "A" and "B" not "A" or "B" category waste paper for which one single EMD and single Security Deposit was demanded.

It is also stated in the petition that petitioner was pressurized to

deposit the security money which was deposited by way of Fixed Deposit Receipt No.709000996222 dated 14th July, 2014 amounting to Rs.3,96,000/- which was acknowledged by the respondent.

The agreement was silent on the time period and the quantity of waste paper which forms the basis of ascertaining the security deposit. Despite numerous visits by the petitioner the issue was not clarified. The respondent threatened that in case the agreement is not executed the security deposit shall be forfeited and contract will be cancelled. Left with no option, the petitioner executed the agreement on 18th September, 2014 on the belief that the issue/objections will be addressed by the respondent.

On 2nd March, 2015 the petitioner was informed that respondent has extended the time period for lifting of the waste paper which was never prayed for by the petitioner. On successful completion of the work, the petitioner requested the respondent for the refund of the security deposit.

The respondent instead of refunding the security deposit directed the petitioner to lift the waste paper which was not of A category. In response the petitioner again submitted that the work has been successfully completed and the refund of the security deposit should be made at the earliest.

The respondent arbitrarily informed the petitioner on 15th May, 2015 that the contract has been cancelled and security deposit has been forfeited. The petitioner requested its bank to stop the encashment of the FDR being used for the purpose of security deposit with the respondent.

The petitioner issued a legal notice dated 10th June, 2015 asking the respondent to release the Security Deposit and withdraw the letter by which the petitioner has been blacklisted and tender an unconditional apology for defaming and tarnishing petitioner's reputation.

The petition under Sec 9 of Arbitration and Conciliation Act, 1996 was listed before ADJ Central Delhi, Tis Hazari Court, whereby, the stay order in favour of the petitioner was passed and the respondent was restrained from liquidating the aforesaid FDR till next date.

The petitioner sent the legal notice dated 17th August, 2015 whereby the arbitration was invoked by the petitioner and requested for appointment of the arbitrator in view of the clause 17 of the agreement to which the Respondent refused by reply dated 25th August, 2015. Hence the present petition is filed.

Notice of the petition was issued to the respondent. Reply has been filed.

Counsel appearing on behalf of the respondent does not dispute that there is an arbitration clause between the parties. However, he states that according to the respondent no dispute remains to be adjudicated.

Learned counsel for the petitioner has shown various documents. After going through the same as well as in view of the averments made in the application, it is a fit case where the Court should appoint an Arbitrator, as despite of receipt of the notice for invocation of the arbitration, the respondent failed to appoint the Arbitrator as per the arbitration clause. The prayer made in the petition is accordingly allowed. The matter is referred to the Delhi International Arbitration Centre ('DAC') who will appoint an Arbitrator in accordance with the provisions of the Act. The Arbitrator to adjudicate the disputes arising out of the agreement in question between the parties including their claims and counter-claims.

The arbitration shall take place under the aegis of DAC. The Arbitrator shall ensure the compliance of the provisions of Arbitration and

Conciliation (Amendment) Act, 2015 before commencing the arbitration. The fees of the learned Arbitrator shall be in terms of the Delhi International Arbitration Centre (Administrative Cost Arbitrator's Fees) Rules.

The petition is accordingly disposed of.

Copy of this order be given *dasti* to the learned counsel for the parties and a copy thereof be delivered to the Additional Coordinator, DAC forthwith.

MANMOHAN SINGH, J.

MARCH 30, 2016/ka