

\$~44

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

+ ARB.P. 78/2017

ARVIND KUMAR JAIN Petitioner
Through: Mr Syed Wasif Haider, Advocate.

versus

UNION OF INDIA Respondent
Through: Mr Jagjit Singh, Mr Preet Singh and
Mr Sukhdev Singh, Advocates.

CORAM:
HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER
% **17.04.2017**

1. The petitioner has filed the present petition under Section 11 of the Arbitration and Conciliation Act, 1996 praying that an arbitrator be appointed to adjudicate the disputes that have arisen between the parties in respect of an agreement dated 24.04.2009.
2. There is no dispute as to the existence of the arbitration clause. The General Conditions of Contract as applicable to the said agreement includes an arbitration clause. The only contention advanced by the respondent is that the petition and the disputes raised, are barred by limitation.
3. Mr Singh, learned counsel for the respondent contended that the works were completed in the year 2011 and the last payment was made on 31.10.2011. The respondent further issued completion certificate on

17.11.2011. Mr Singh further states that the petitioner also signed a no claim certificate at the time of receiving the payment that is in 2011. After receiving the payments, the petitioner demanded further payments by the letter dated 20.02.2013 and threatened to invoke the arbitration clause if such payments were not made. The said demand for payment was rejected by the respondent. Thereafter, on 25.02.2015, the petitioner invoked the arbitration clause, which was reiterated on 04.06.2015. The said request was declined by respondent by a letter dated 18.10.2016.

4. Mr Singh, submits that it is apparent from the above that claims are barred by the limitation.

5. At this stage, it is not necessary to examine whether the claims made by the petitioner are barred by time. However, it is seen that the petitioner had invoked the arbitration clause for the first time on 25.02.2015 and thereafter, on 04.06.2016 which was declined on 18.10.2016. The petitioner has filed the present petition within three years of the respondent declining the request for appointment of an arbitrator.

6. Indisputably, the provisions of the Limitation Act, 1963 apply to arbitration proceedings and, therefore, it does, *prima facie*, appear that claims made by the petitioner would be barred by the limitation. However, the said question would necessarily have to be considered by the arbitral tribunal, as and when constituted.

7. Accordingly, it is directed that an arbitrator be appointed under the Rules of Delhi International Arbitration Centre (DIAC). The parties shall

appear before the Co-ordinator, DIAC on 11.05.2017 at 04:00 PM. The arbitration shall be conducted under the aegis of DIAC and in accordance with its Rules.

8. The petition is disposed of.

VIBHU BAKHRU, J

APRIL 17, 2017
RK