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

+ ARB.P. 206/2017

B. S. SANGWAN

..... Petitioner

Through: Mr. S.W. Haider, Advocate.
versus

UNION OF INDIA

..... Respondent

Through: Mr. Joydeep Mazumdar, Advocate
with Mr. Rohit Dutta, Advocate for
Northern Railways.

CORAM:

HON'BLE MR. JUSTICE JAYANT NATH

ORDER

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20.09.2017

This petition is filed under Section 11 of the Arbitration and Conciliation Act, 1996 (*hereinafter referred to as 'The Act'*) seeking appointment of arbitrator to adjudicate the disputes between the parties.

It is urged in the petition that the work pertaining to Construction of Limited Height Subway in lieu of U/M L.Xing No. C-32 at Km.34/0-1 85 C-34 at Km. 37/0-1 in Gohana-Mudlana section of ROK-PNP under ADEN/ROK by cut and cover method was awarded to the petitioner on 16.04.2013. As disputes arose between the parties, on 26.12.2016, the petitioner invoked the Arbitration Clause contained in Clause 64 of the General Conditions of Contract. As there was no response from the respondent, the present petition has been filed.

The matter came up for hearing before this Court on 21.03.2017 when learned counsel for the respondent accepted notice and sought time to file reply. Thereafter, the matter came up for hearing on 11.05.2017 then again

more time was sought to file reply. The same was the position on 22.08.2017. Despite having taken three dates for filing reply even till date reply has not been filed. I have no option but to close the right of respondent to file the reply.

At this stage, learned counsel for the respondent submits that the limited objections that the respondents have, is that the letter dated 26.12.2016 invoking the Arbitration Clause was never received by the respondents. Hence, he submits that the claim of the petitioner would be barred by limitation.

The admitted facts are that the respondent does not dispute the arbitration agreement. In terms of Section 11 (6) (A) of the Act, this court has only to confine itself to examination of the existence of an arbitration agreement.

It is also a matter of fact that there is no reply filed. For the purpose of this petition prima-facie I hold that the petitioner has sent notice invoking the arbitration clause. In terms of the judgment of the Supreme Court in the ***Datar Switchgears Ltd. v. Tata Finance Ltd. and Anr. (2000) 8 SCC 151***, the respondent has lost the right to nominate the arbitrator.

Accordingly, Ms.R.Kiran Nath, District Judge (Retired) (Mobile No.9910384659) is appointed as the Sole Arbitrator to adjudicate the disputes between the parties. The arbitration proceedings will take place under the aegis of the Delhi International Arbitration Centre (DIAC). A copy of this order be sent to DIAC and to the learned Arbitrator. All the contentions raised by the respondent are kept open for adjudication by the learned arbitrator including the contentions raised regarding the present petition being barred by limitation.

Petition stands disposed of.

JAYANT NATH, J.

SEPTEMBER 20, 2017

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