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

+ ARB.P. 244/2017

AJAB SINGH & CO.

..... Petitioner

Through: Mr Gaurav Wadhwa, Advocate.

versus

DELHI DEVELOPMENT AUTHORITY

..... Respondent

Through: Ms Ruhi Chopra, Advocate.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER

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17.05.2017

1. This is a petition filed under Section 11 of the Arbitration and Conciliation Act, 1996 (hereafter 'the Act'), *inter alia*, praying that an arbitrator be appointed to adjudicate the disputes that have arisen between the parties in relation to a contract dated 24.02.2015.

2. The General Conditions of the Contract (GCC) as applicable, includes an arbitration clause. Thus, there is no dispute as to the existence of the arbitration agreement between the parties. However, the learned counsel for the respondent states that in terms of the said clause, the petitioner was required to make a claim "*within a period of 120 days of receiving the intimation from the Engineer-in-Charge that the final bill is ready for payment*". She further contended that in terms of clause 25 of GCC, it was expressly provided that the contractor would be deemed to have waived all claims that were not made within the specified period and the DDA would be discharged and released from all liabilities under the contract in respect

of those claims. She submits that in view of the express terms of the contract, the claims of the petitioner is deemed to have waived its claims and has also forfeited its right for appointment of an arbitrator.

3. The question whether the period available to a person for availing his remedies under the Limitation Act, 1963 can be curtailed has been considered by this court in various cases.

4. In *Chander Kant & Co. v. The Vice Chairman, DDA& Others: MANU/DE/2221/2009* a division bench of this court had rejected the contention that a demand for arbitration beyond the specified period would result in forfeiture of a party's right to refer the disputes to arbitration. A similar view was also taken by this Court in *Hindustan Construction Corporation v. Delhi Development Authority: 77 (1999) DLT 165*; and, *Pandit Construction Company vs. Delhi Development Authority: 2007 (3) Arb. LR. 205 (Del)*.

5. Following the aforesaid decisions, this Court in the case of *KMB - Era (JV) v. Airport Authority of India: Arb.P.620/2016, decided on 14.12.2016* had appointed an arbitrator. In a recent decision in the case of *B.L. Kashyap & Sons Ltd. v. Airport Authority of India: Arb.P. 360/2016, decided on 06.10.2016*, a Coordinate Bench of this Court had also followed the earlier decisions for appointment of an arbitrator.

6. In view of the aforesaid decisions, the curtailment of the time period within which the claim can be preferred would be void. Thus, a sole arbitrator is required to be appointed to adjudicate the disputes between the parties.

7. Accordingly, Vijay Motwani, Spl. Director General (retired), CPWD (9811793440) is appointed as the sole arbitrator to adjudicate the disputes between the parties. This is subject to the arbitrator making the necessary disclosure under Section 12 of the Act and not being ineligible under Section 12(5) of the Act. The arbitrator shall fix his fees in consultation with the counsel of the parties. The parties are at liberty to approach the arbitrator for eliciting the necessary disclosure and for further proceedings.

8. The petition is disposed of.

VIBHU BAKHRU, J

MAY 17, 2017

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