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

+ ARB.P. 279/2017

AGGARWAL WATER SUPPLIERS Petitioner
Through Mr.S.W.Haider, Advocate

versus

UNION OF INDIA Respondent
Through Mr.Jagjit Singh, Sr.Standing Counsel
with Mr.Preet Singh and Mr.Sukhdev
Singh Advs.

CORAM:

HON'BLE MR. JUSTICE JAYANT NATH

ORDER

% **15.09.2017**

1. This petition is filed under Section 11 of the Arbitration and Conciliation Act, 1996 (*hereinafter referred to as 'the Act'*) seeking appointment of an independent arbitrator to adjudicate the claim of the petitioner.
2. It is the contention of the petitioner that the work pertaining to "Provision of washable apron of PF No. 2 at HNZM Station under ADEN/NZM" was awarded to the petitioner on 31.01.2011 vide Acceptance Letter for Rs.72,43,805/-. The stipulated date of completion of work was six months.
3. Disputes having arisen between the parties, on 05.04.2011, respondent terminated the contract and debarred the petitioner from participating in re-tendering of the same. In May, 2011, the respondent circulated a letter to the

other division for recovery of total amount of Rs.5,39,380/- from any bill payable to the petitioner.

4. The petitioner filed a suit for declaration, permanent and mandatory injunction seeking a decree of declaration that the said letter dated 05.04.2011 issued by the respondent be declared null and void and also the relief of injunction thereby seeking to restrain the respondent department and its officers from implementing the said letter.

5. On 07.05.2014, the petitioner invoked the arbitration clause. On 04.02.2015, the trial court dismissed the said suit under Order 7 Rule 11 CPC as the notice under Section 80 CPC has not been issued. On 08.03.2017 the appeal being RFA No.754/2015 filed by the petitioner was dismissed as withdrawn by this court reserving liberty to the petitioner to pursue his application invoking the arbitration clause governing the parties. Hence, the present petition.

6. The admitted fact is that an arbitration clause exists between the parties being clause No.64(3)(a)(ii) of GCC 1999.

7. This matter was came up for hearing before this court on 26.04.2017 and notice was issued to the respondent. The learned counsel for the respondent appeared and accepted the notice. Four weeks' time was granted to file reply. On the next date, i.e. 17.08.2017, the learned counsel for the respondent argued the matter and sought another opportunity to file a reply. A final opportunity was granted to the respondent to do the needful. The reply still has not been filed.

8. The learned counsel for the respondent submits that the claim of the petitioner is barred by limitation. He submits that the agreement was terminated by the respondent on 05.04.2011 and the invocation has been

done on 07.05.2014. Hence he urges that the claim is barred by limitation and cannot be referred to the arbitration.

9. The learned counsel for the petitioner has, however, pointed out that it was in May, 2011, the concerned department had circulated the letter for recovery of the amount from the dues of the petitioner. The invocation having been made on 07.05.2014. He submits that the claim of the petitioner is within the limitation.

10. The issue of limitation is a mixed question of law and fact. This issue is left open to be adjudicated upon by the learned arbitrator.

11. Despite invocation of the arbitration clause on 07.05.2014, the respondent has not taken any steps to appoint an arbitrator in terms of the arbitration clause.

12. In view of judgment of the Supreme Court in ***Datar Switchgears vs. Tata Finance Ltd., (2000) 8 SCC 151*** the respondent lost its right to nominate an arbitrator in terms of the arbitration clause.

13. Accordingly, I appoint Ms.Ravinder Kaur, District Judge (Retd.) (Mobile No.9910384660) as the sole arbitrator to adjudicate the dispute between the parties. The arbitration shall take place under the aegis of Delhi International Arbitration Centre, New Delhi (*in short 'The DIAC'*). A copy of this order be sent to the DIAC and to the learned arbitrator.

14. Petition stands disposed of as above.

JAYANT NATH, J.

SEPTEMBER 15, 2017/v