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

+ **ARB.P. 343/2017**

M/S ERA INFRA ENGINEERING LIMITED Petitioner

Through: Mr Lovkesh Sawhney, Advocate.
versus

**EXECUTIVE ENGINEER, PUBLIC WORKS
DEPARTMENT**

..... Respondent

Through: Mr Akshay Choudhary, Mr Arun
Kumar Panwar, Advocates for Mr
Raman Duggal, Standing counsel
(Civil), GNCTD.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER

% **19.05.2017**

IA No.6213/2017

1. Allowed, subject to all just exceptions.
2. The application stands disposed of.

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3. The petitioner has filed the present petition 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 from the contract for execution of works relating to 200 Beds Hospital at Kokiwala Bagh, Ashok Vihar, Phase-IV, Delhi. The petitioner had participated in the tender for the aforesaid work and the letter of intent dated 29.12.2008 was issued. The General Conditions of Contract (hereafter the 'GCC') which form a part of the agreement between the parties includes an arbitration clause.
4. In view of the disputes that had arisen between the parties, the

petitioner invoked the dispute resolution clause and sought resolution of the same. After exhausting the remedies for resolution at various stages, the petitioner invoked the arbitration clause by a notice dated 14.03.2017. The learned counsel for the respondent has opposed the present petition particularly on the ground that the invocation was beyond the period of limitation.

5. He referred to the pleadings and pointed out that the final bill was paid on 26.06.2015 and the disputes were sought to be raised on 12.08.2016. He also referred to the arbitration clause and has drawn the attention of this Court to para (iv) of clause 25(ii) of GCC, the relevant extract of which reads as under:-

“It is also a term of this contract that if the contractor does not make any demand for appointment of arbitrator in respect of any claims in writing as aforesaid within 120 days of receiving the intimation from the Engineer-in-charge that the final bill is ready for payment, the claim of the contractor shall be deemed to have been waived and absolutely barred and the Government shall be discharged and released of all liabilities under the contract in respect of these claims.”

6. He submits that in view of the express agreement between the parties, the petitioner had waived its right not only to raise claims as sought to be raised but it had also forfeited its right for reference of the disputes to arbitration.

7. The Division Bench of this Court in the case of ***Chander Kant & Co. v. The Vice Chairman, DDA & Others: MANU/DE/2221/2009*** 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 v. Delhi Development Authority and Anr.: 2007 (3) Arb. LR. 205 (Del)***.

8. 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 has also followed the earlier decisions and appointed an arbitrator although the request for appointment of an arbitrator was made beyond the period as specified under the agreement.

9. In view of the above, it is necessary that an Arbitrator be appointed. Accordingly, Justice Manmohan Sarin (Retd.) (Mobile No. 9818000210) is appointed as a 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 the fees in consultation with the counsel for the parties. The parties are at liberty to approach the Arbitrator for eliciting necessary disclosure and for further proceedings.

10. The petition is disposed of.

VIBHU BAKHRU, J

MAY 19, 2017
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