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

+ **ARB.P. 451/2017**

BRITE ARICON (CONSORTIUM) & ORS. Petitioners
Through: **Mr. Vaibhav Dang, Advocate**

versus

AIRPORT AUTHORITYS OF INDIA Respondent
Through: **Mr. S K Chandwani with Mr. Sameer Chaudhari, Advocate**

CORAM:

HON'BLE MR. JUSTICE JAYANT NATH

ORDER

% 13.09.2017

1. This petition is filed under Section 11 (6) of the Arbitration and Conciliation Act, 1996 seeking the appointment of a sole arbitrator.
2. Some of the facts are that the petitioner no.1 is said to be a consortium comprising of petitioner nos. 2 and 3. The petitioner no.1 had entered into an agreement on 27.7.2008 for the work relating to “Resurfacing of Runway, Taxiway and Apron, etc. at Ludhiana Airport”.
3. Disputes having been arisen between the parties the petitioner invoked the arbitration clause by letter dated 3.10.2012. The appointing authority under the arbitration clause namely, Member (Planning) of the respondent appointed Shri J P Singhal, Chief Engineer (Retd.), CPWD, as a sole arbitrator to adjudicate the claims.
4. The learned arbitrator passed an award dated 21.4.2014. Both the parties aggrieved by the award filed the objections under Section 34 of the Act. On 16.3.2017, this Court by a common judgment in OMP No.

1039/2014 and 985/2014, finding inherent contradictions and inconsistencies in the award dated 21.4.2014, set aside as far as the claims of the respondents were concerned. The award against the respondent was upheld. The petitioner was given liberty to seek appointment of a fresh arbitrator in respect of his claim in accordance with law. Benefit of Section 34 (4) was also given to the petitioner.

5. Pursuant to the said decision of this Court, on 30.3.2017, petitioner again requested the concerned authority namely, Member (Planning) to appoint the sole arbitrator. A reminder has also been sent on 20.7.2017. As no steps have been taken by the respondent, the present petition has been filed on 29.6.2017.

6. When the matter came up on 24.7.2017, learned counsel for the respondent accepted notice and sought time to take instructions/file reply. Four week's time was given to file its reply. Needful has not been done. Learned counsel also does not have instructions from the respondent. He seeks further time to file its reply.

7. In my opinion, no grounds are made out to give further time to the respondent to file a reply. Admittedly, there exist an arbitration clause between the parties, as even the respondents have filed their counter claim before the previous Arbitrator. Accordingly, the request of the counsel for the petitioner seeking adjournment and further time to file the reply is rejected.

8. At this stage, the counsel for the respondent also submits that though the agreement between the parties is between petitioner no.1 and the respondent, the petitioner nos. 2 and 3 who are part of consortium have also been added as party. He submits that they are neither necessary nor proper

parties. Learned counsel for the petitioner has, however, pointed out that no doubt the agreement was executed by petitioner No.1 but admittedly petitioners No.1 to 3 are part of the consortium who was carrying out the work for the respondent.

9. The Agreement between the parties in Article 4 contains an arbitration clause. The admitted fact is that as per terms of the Arbitration Agreement the respondent had to appoint the Arbitrator. In the present case the petitioner has subsequent to the judgment of this Court dated 16.3.2017 setting aside the Award, on 30.3.2017 sent a communication to the petitioner/Member (Planning) Airport Authority of India to appoint a fresh Sole Arbitrator. Copy of the postal receipt evidencing dispatch of the said communication has been placed on record. Similarly, on 27.4.2017 the same functionary has been reminded to appoint a Sole Arbitrator. Again copy of the postal receipt evidencing dispatch of the said communication of the Award has been placed on record. The respondent despite receipt of these communications has failed to take steps to appoint an Arbitrator. In view of the judgment of the Supreme Court in ***Datar Switchgears Ltd. vs. Tata Finance Ltd., (2000) 8 SCC 151*** it is clear that the respondents have lost their right to nominate the learned Arbitrator.

10. Learned counsel for the petitioner submits that the issue involved being a technical one, it is appropriate that the person having knowledge of technical matters is appointed as a Sole Arbitrator.

11. The matter is accordingly referred to the Delhi International Arbitration Centre (DIAC). The arbitration proceedings will take place under the aegis of the Delhi International Centre (DIAC). The DIAC will appoint a technical person/retired Engineer as the Sole Arbitrator to

adjudicate the dispute between the parties. The issue raised by the learned counsel for the respondent about impleadment of petitioners No.2 and 3 to the preset petition is also left open to be adjudicated and decided upon by the learned Arbitrator. A copy of this order be sent to DIAC.

12. The petition is disposed of. All pending applications, if any, also stand disposed of.

JAYANT NATH, J.

SEPTEMBER 13, 2017/P