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

+ ARB.P. 1/2017

UNION OF INDIA

..... Petitioner

Through: Dr. Indra Pratap Singh, Mr. V.R.S. Krishna
& Mr. A.S. Dateer, Advocates.

versus

CIMMCO LTD. & ORS.

..... Respondents

Through: Mr. K. Datta & Mr. Rahul Malhotra,
Advocates for R-1.
Ms. Madhurima Tatia, Advocate for R-2.
Ms. Purti Marwaha Gupta, Advocate for R-4.
Mr. Mohinder Singh, Mr. Lovekesh
Aggarwal & Mr. Ankur Goel, Advocates for
R-5.

CORAM: JUSTICE S.MURALIDHAR

ORDER

02.02.2017

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1. The present petition has been filed by the Union of India through the Department of Mechanical Engineering/Development Railway Board, Rail Bhawan under Section 11(6) of the Arbitration & Conciliation Act, 1996 (Act) seeking the appointment of an Arbitrator to adjudicate the disputes between the parties. Respondent No.1 is Cimmco Limited. Respondent Nos.2 to 5 are other parties with which the Petitioner does not have any formal agreement containing an arbitration clause. The only reason why the

Petitioner appears to have impleaded those Respondents is because of certain other proceedings in the writ jurisdiction which for the purpose of this order need not be discussed.

2. At the outset, the Court posed a question to the learned counsel for the Petitioner whether a notice was sent to Respondent No.1 invoking the arbitration clause in the sub-lease agreements dated 20th October, 1997 entered into with it?

3. Although the counsel for the Petitioner referred to the correspondence between the parties he was candid that there is no specific notice sent by the Petitioner to Respondent No.1 invoking the arbitration clause and seeking reference of disputes between the parties to arbitration.

4. This becomes critical because of the fundamental requirement of Section 11(6)(a) of the Act where there must a failure by a party to the arbitration agreement to act as required by the procedure outlined thereunder. When such party is not called upon to act in terms of the agreement to appoint an arbitrator, the question of that party failing to act does not arise. Therefore the trigger for the entire process is the notice invoking the arbitration clause and requesting for appointment of an Arbitrator. This also is the object behind Section 21 of the Act which states that the arbitral proceedings in respect of a particular dispute commences unless otherwise agreed between the parties on the date on which the request for arbitration is received by the Respondent.

5. In the absence of the Petitioner having taken the primary step for invoking the jurisdiction of this Court under Section 11(6) of the Act, the Court is not inclined to entertain the petition at this stage. It will be open to the Petitioner to satisfy the foundational requirement of Section 11(6) of the Act before filing a fresh petition. This petition is dismissed in the above terms.

S. MURALIDHAR, J.

FEBRUARY 02, 2017

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