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

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Judgment delivered on: 30.08.2017

+ ARB.P. 542/2017

KISHAN LAL JEWELS (P) LTD.

..... Petitioner

versus

PEC LIMITED

..... Respondent

Advocates who appeared in this case:

For the Petitioner : Mr. Jagjit Singh with Mr. Preet Singh,
Advocates.

For the Respondents : Mr. Rajesh Kumar Gautam, Advocate.

CORAM:-

HON'BLE MR JUSTICE SANJEEV SACHDEVA

JUDGMENT

30.08.2017

SANJEEV SACHDEVA, J. (ORAL)

IA No.9895/2017 (exemption)

Exemption is allowed subject to all just exceptions.

ARB.P. 542/2017

1. The petitioner, by this petition under Section 11 of the Arbitration & Conciliation Act, 1996, seeks appointment of an independent Sole Arbitrator to adjudicate the disputes between the

parties.

2. The petitioner, on 12.05.2014, submitted a bid in response to a tender invited by the respondent for purchase of gold. The tender was opened on 20.05.2014.

3. As per the petitioner, a Circular was issued by the Reserve Bank of India on 21.05.2014 permitting private parties to import gold. The petitioner claims that in view of the subsequent Circular, issued by the Reserve Bank of India, the *force majeure* clause became applicable. This contention was denied by the respondent leading to disputes between the parties.

4. The petitioner has invoked arbitration by a Legal Notice dated 05.05.2017.

5. The petitioner had proposed the name of a Sole Arbitrator. On the respondent declining to accede to the request for reference of disputes to arbitration, the petitioner has filed this petition.

6. Learned counsel for the respondent raises two objections to the appointment of the Sole Arbitrator.

7. First of all, it is contended that the claim of the petitioner is barred by limitation and secondly, that the arbitration clause stipulates that the arbitration shall be in accordance with the Rules of Arbitration of the Indian Council of Arbitration. Learned counsel for

the respondent submits that if an arbitrator is to be appointed, the arbitration has to be under the aegis of the Indian Council of Arbitration as agreed to between the parties.

8. Paragraph 9 of the terms and conditions of the tender, which stipulates arbitration, reads as under:-

“9. ARBITRATION:

Any dispute or difference whatsoever arising between the parties out of or relating to the construction, meaning, scope, operation or effects of this contract or the validity or the breach thereof shall be settled by Arbitration in accordance with Rules of Arbitration of Indian Council of Arbitration and the Award made in pursuance thereof shall be binding on the parties. The venue of the Arbitration will be New Delhi and Delhi Court shall have jurisdiction. The Indian Law shall apply.”

9. Reading of the paragraph 9 shows that the arbitration is to be held in accordance with the Rules of the Arbitration of Indian Council of Arbitration. Since the parties have agreed that the arbitration shall be under the aegis of the Indian Council of Arbitration, the Arbitral Tribunal has to be constituted in terms of the Rules of the Indian Council of Arbitration.

10. With regard to plea of the learned counsel for the respondent that the claim is barred by limitation, it may be noted that the tender in issue, which led to the disputes, was floated on 12.05.2014 and was opened on 20.05.2014. The RBI Circular based on which the

petitioner has raised claims was issued on 21.05.2014. The Notice Invoking Arbitration was issued on 05.05.2017 within a period of three years of not only the Circular of RBI but also the floating of the tender. It is the settled position of law that the arbitration commences from the date the notice invoking arbitration is issued, which, in the present case, is 05.05.2017.

11. In view of the above, the claim of the petitioner is clearly within limitation from the alleged cause of action.

12. It is, accordingly, directed that the Arbitral Tribunal be constituted by the Indian Council of Arbitration under the Rules framed thereunder. The petitioner shall file an appropriate application with the Registrar of the Indian Council of Arbitration for constitution of the Arbitral Tribunal in accordance with the Rules of the Indian Council of Arbitration.

13. The petition is, accordingly, disposed of. There shall be no order as to cost.

SANJEEV SACHDEVA, J

AUGUST 30, 2017
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