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

+ ARB.P. 500/2017

DHARAMVIR AND COMPANY Petitioner

Through Mr.G.L.Verma, Adv.

versus

DELHI DEVELOPMENT AUTHORITY & ANR..... Respondents

Through Ms.Aakanksha Kaul, Adv.

CORAM:

HON'BLE MR. JUSTICE JAYANT NATH

ORDER

% **11.10.2017**

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 arbitrator to adjudicate the disputes between the parties.

2. It is the submission of the petitioner that the petitioner was awarded a work order pertaining to repair of staff quarters in Pocket-5, Paschim Vihar, New Delhi on 22.12.2012. The work is said to have been completed on 22.07.2014. Disputes having arisen between the parties, the petitioner is said to have invoked the arbitration clause by sending several notices including notice dated 06.06.2015 to the Superintendent Engineer, 28.12.2016 to the Chief Engineer and notice dated 15.02.2017 to the Engineer Member of DDA seeking appointment of an Arbitrator. Despite receipt of the said notices, the respondent have not taken any steps to appoint an Arbitrator. Hence, in terms of the judgment of the Supreme Court in the case of ***Datar Switchgears vs. Tata Finance Ltd., (2000) 8 SCC 151*** the respondents have lost their right to nominate an arbitrator.

3. Learned counsel appearing for the respondents on the last date of hearing had sought some time to file a reply. Reply has not been filed. Learned counsel for the respondents submits that the reason for not appointing the arbitrator was that no dispute survives. Reliance is also placed on the terms of the contract being clause No. 25(ii) to state that the petitioner has not taken action in terms of the said clause and has lost its right to arbitration.

4. There is no dispute that there exists an arbitration clause between the parties in the agreement which is clause No. 25. As per clause No. 25(ii) disputes are to be adjudicated upon by a sole arbitrator who is to be a technical person having knowledge and experience of the trade to be appointed by the Engineer Member, DDA.

5. Under Section 11(6A) of the Arbitration and Conciliation Act, this court while considering an application under Section 11(6) of the Act shall confine itself to the examination of the existence of an arbitration agreement.

6. Leaving all the issues open for adjudication before the Arbitrator including the objection of the respondent, it is ordered that the arbitration proceedings shall take place under the aegis of the Delhi International Arbitration Centre(DIAC). The DIAC shall nominate an arbitrator who is technically qualified to adjudicate the disputes between the parties as per its rule from the panel of arbitrators of the DIAC.

7. A copy of this order be sent to the DIAC

8. The petition is accordingly disposed of.

JAYANT NATH, J

OCTOBER 11, 2017/rb