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IN THE HIGH COURT OF DELHI AT NEW DELHI

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**Reserved on: 01st November, 2017
Pronounced on: 06th November, 2017**

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O.M.P.(MISC.)(COMM.) 25/2017 & IA No.12741/2017

SHARMA FABRICATORS & ERECTORS PVT. LTD.

..... Decree Holder

Through : Mr.Abhijeet Sinha and Mr.Arijit
Mazumdar, Advocates.

versus

BILT GRAPHIC PAPER PRODUCTS LTD.

..... Judgement Debtor

Through : Mr.D.K.Malhotra and Mr.Rajesh
K Malhotra, Advocates.

CORAM:

HON'BLE MR. JUSTICE YOGESH KHANNA

YOGESH KHANNA, J.

1. This Court in Arbitration Petition No.663/2015 had appointed Justice Anil Dev Singh (Retd.) as a sole Arbitrator to adjudicate the disputes between the parties. The statement of claim was filed and then for some time the parties tried to explore the possibilities to amicably settle the matter but it failed. The pleadings are since complete and even the witnesses have been recorded. Now the matter is listed before the learned Arbitrator for final arguments. Both the parties have applied for extension of time as prayed for in the application as also to clarify as to

which of the Act, new or old, shall apply. This confusion is because of an order dated 17.02.2016 of this Court which notes:

"The learned Arbitrator shall ensure the compliance of the provisions of Arbitration and Conciliation (Amendment) Ordinance, 2015 before commencing the arbitration. The fees of the learned Arbitrator shall be in terms of the Delhi International Arbitration Centre (Administrative Cost Arbitrator's Fees) Rules."

2. The learned Arbitrator has required the parties to seek clarification as to whether or not the amendment ordinance shall apply. In an event the amendment ordinance applies, the learned counsels shall request the court to extend the time by three months with effect from 19.08.2017 for making an award. In fact the time has been extended once for four months vide an order dated 07.09.2016 but the issue which remains to be answered is if the unamended provision of the Act or the amended provision shall apply.

3. Section 26 of the Arbitration and Conciliation Act (amended 2015) perhaps gives an answer which read as under:

"26. Act no to apply to pending arbitral proceedings.- Nothing contained in this Act shall apply to the arbitral proceedings commenced, in accordance with the provisions of section 21 of the principal Act, before the commencement of this Act unless the parties otherwise agree but this Act shall apply in relation to arbitral proceedings commenced on or after the date of commencement of this Act."

4. Section 26 above of the Arbitration and Conciliation (Amendment) Act of 2015 clarifies that nothing in this Act would apply to the arbitral proceedings commenced in accordance with the provisions of section 21

of the principal Act before commencement of this Act *unless the parties otherwise agree*.

5. The Arbitrator in this case admittedly was directed by the order of this Court to ensure the compliance of the provisions of the Arbitration and Conciliation (Amendment) Ordinance, 2015, hence the need was felt for extension of the time. However, now since both the counsels submit that the consent of the respondent(s), as envisaged in Section 26 (supra) was never recorded by the Court so these arbitration proceedings shall be guided by the unamended provisions of the Act and such provisions shall apply to the present case. This answers the query raised.

6. In view of the above the petition and the pending application stands disposed of.

NOVEMBER 06, 2017

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YOGESH KHANNA, J