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

+ **ARB.P. 661/2017**

BANSAL CONSTRUCTION CO. Petitioner

Through: **Mr.S.W.Haider, Adv.**

versus

UNION OF INDIA Respondent

Through: **Mr.J.K.Singh, Standing counsel for
Railways.**

CORAM:

HON'BLE MR. JUSTICE NAVIN CHAWLA

ORDER

% **08.12.2017**

This petition under Section 11 of the Arbitration and conciliation Act, 1996 has been filed by the petitioner praying for appointment of a Sole Arbitrator for adjudication of the disputes that have arisen between the parties in relation to the work pertaining to “Development of mandatory facilities on stabling lines for terminal examination at New Delhi Depot under ADEN/New Delhi” awarded to the petitioner under Acceptance Letter dated 23rd May, 2007.

It is submitted by the counsel for the petitioner that the agreement between the parties contains an arbitration agreement in form of clause 64(3)(a)(i) which is reproduced herein below:-

“64(3)(a)(i) In cases where the total value of all claims in question added together does not exceed Rs.10,00,000/- (Rupees Ten Lakhs only), the Arbitral Tribunal consists of a sole arbitrator who shall be either the General Manager or a gazetted officer of Railway not below the grade of JA Grade nominated by the General Manager in that behalf. The sole arbitrator

shall be appointed within 60 days from the day when a written and a valid demand for arbitration is received by Railways.”

I am informed that the amount of Rs. 10 Lakhs in the above quoted Clause now stands enhanced to Rs. 1 crore.

It is further submitted that the petitioner had invoked the arbitration agreement on 2nd November, 2011. The said request was declined by the respondent vide its communication dated 19th June, 2015 relying upon a “No Claim Certificate” issued by the petitioner. Not being satisfied with the said reply, the petitioner again requested the respondent for appointment of an arbitrator vide its letter dated 3rd August, 2016. The same has again been declined by the respondent vide letter dated 21st August, 2017. The present petition has been filed by the petitioner in view of such rejection.

Counsel for the respondent submits that the present petition is highly belated and the claim, in fact, would be barred by law of limitation. He further submits that the petitioner, having executed a “No Claim Certificate”, cannot invoke the arbitration agreement. He submits that in view of the above, petitioner is not entitled to seek appointment of an arbitrator.

I am unable to accept the above submissions of the counsel for the respondent, Under Section 11 (6A), the enquiry by this Court is confined to the existence of an arbitration agreement. Admittedly, an arbitration agreement exists between the parties. Whether the claim is barred by law of limitation or whether it can be at all maintained in light of “No Claim Certificate”, will be issues to be determined by the

Arbitral Tribunal, may be in form of preliminary issue.

In view of the above, I hereby appoint **Mr.Vinod Jain**, District & Sessions Judge (Retd.), Punjab, Road No.33, Kothi No.3, 3rd Floor, Punjabi Bagh, West Extension, New Delhi, Ph.09468178585 as a Sole Arbitrator for adjudication of the disputes that have arisen between the parties in relation to the above agreement. The arbitration shall be conducted under the aegis of Delhi International Arbitration Centre (DIAC) and fee shall be payable in accordance with the DIAC Rules. The Sole Arbitrator shall make a disclosure in terms of Section 12 before proceeding with the arbitration.

All contentions and submissions of either parties shall remain open before the Sole Arbitrator for its adjudication.

The parties shall appear before the DIAC on 15th January, 2018 at 2.00 pm.

The petition is allowed in the above terms.

Dasti.

NAVIN CHAWLA, J

DECEMBER 08, 2017

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