

\$~22

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **ARB. P. 120/2018**
RAJWANT SINGH Petitioner
Through: Mr.Samrat Nigam, Adv.

versus

NDMC Respondent
Through: Mr.V.Aggarwal, Standing counsel,
NDMC with Mr.A.Pathak, ASC

CORAM:
HON'BLE MR. JUSTICE NAVIN CHAWLA

ORDER
% **16.03.2018**

The present petition under Section 11 of the Arbitration and Conciliation Act, 1996(hereinafter referred to as the 'Act') has been filed by the petitioner seeking appointment of a Sole Arbitrator for adjudicating the disputes that have arisen between the parties in relation to the award of work for restoration of Facade of Inner Circle Blocks (Civil and Electrical works) by the Engineers India Ltd., as a constituted power of attorney of the respondent, on the petitioner vide Work Order dated 5th November, 2009. The agreement between the parties contains an arbitration agreement between the parties.

The disputes having arisen between the parties, the petitioner had earlier initiated an arbitration proceeding only against the EIL. By an order dated 11th December, 2015, the Arbitrator held that the arbitration proceedings against EIL were not maintainable in absence of the respondent and the arbitration proceedings were terminated.

The petitioner by its letter dated 24th August, 2016, requested the Chairperson of the respondent to appoint an Arbitrator. The respondent having failed to appoint an Arbitrator, the present petition was filed.

Notice on this petition was issued to the respondent on 13th February, 2018. The respondent has not filed its reply, however, counsel for the respondent made an oral submission opposing the present petition.

The respondent does not deny the existence of the arbitration agreement or the invocation thereof. Counsel for the respondent submits that the claim raised by the petitioner would be barred by law of limitation as also *res judicata*. He further submits that EIL will be a necessary and a proper party in the present proceedings.

In view of Section 11(6A) of the Act, the examination by this Court, while exercising its powers under Section 11 of the Act, is confined only to the existence of the arbitration agreement. As the existence of the arbitration agreement is not denied by the respondent, I see no impediment in appointing a Sole Arbitrator for adjudicating the disputes that have arisen between the parties.

The contention of the Counsel for the respondent regarding limitation, *res judicata* or impleadment of EIL as a necessary or proper party would have to be considered by the Arbitrator once the claims are filed by the petitioner.

At the request of parties, (Counsel for the respondent on instructions, has made this statement), the parties are directed to appear before the Delhi International Arbitration Centre (DIAC) on

9th April, 2018 at 3.00 p.m.

The DIAC shall appoint a Sole Arbitrator to adjudicate the disputes between the parties in relation to above-mentioned Work Order. The arbitration and the fee shall be governed by the DIAC rules.

The petition is allowed in the above stated terms with no order as to costs.

Dasti.

NAVIN CHAWLA, J

MARCH 16, 2018
RN