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IN THE HIGH COURT OF DELHI AT NEW DELHI

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ARB.P. 117/2018

GHARONDA ASSOTECH PROJECTS PVT LTD..... Petitioner

Through: Ms.Tania Sharma and Ms.Prapti
Mehta, Advs.

versus

BEML LTD

..... Respondent

Through: Mr.Dhananjaya Mishra, Adv.

CORAM:

HON'BLE MR. JUSTICE NAVIN CHAWLA

ORDER

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07.08.2018

This 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 an Arbitrator for adjudicating of the disputes that have arisen between the parties in relation to the Agreements dated 04.06.2007 and 10.09.2007 by which the respondent had awarded the work of renovation of respondent's Guest House at Greater Kailash-I, New Delhi to the petitioner.

The Agreements between the parties contain an Arbitration Agreement in form of Clause 4 thereof.

The disputes having arisen between the parties, the petitioner invoked the Arbitration Agreement vide its notice dated 03.11.2017. The respondent vide its response dated 16.11.2017 refused to appoint an Arbitrator *inter-alia* on the ground that no amount is due or payable by the respondent to the petitioner, forcing the petitioner to file the present petition.

Learned counsel for the respondent submits that the petitioner had invoked the Arbitration Agreement between the parties on 23.03.2012 while the present petition has been filed on 15.01.2018 and therefore, the present petition is barred by Law of Limitation. On the other hand, learned counsel for the petitioner submits that after the invocation of arbitration vide letter dated 23.03.2012, the parties had exchanged correspondence whereby the respondent had called upon the petitioner to forward the documents in support of its claim. It is only upon the failure of the parties to arrive at a settlement, that the petitioner finally invoked the Arbitration Agreement vide its notice dated 03.11.2017. She has taken the reference of various documents in this regard.

In view of the documents on record and the submissions made by the counsel for the petitioner, it is clear that the invocation of the Arbitration Agreement vide notice dated 23.03.2012 cannot be considered for the purpose of limitation as notice under Section 21 of the Act. The parties had admittedly tried to resolve their disputes thereafter and therefore, neither party treated the said letter to be a notice under Section 21 of the Act. In any case, the present petition is premised on the notice of invocation dated 03.11.2017 and, therefore, the petition cannot be said to be barred by law limitation.

The next contention of learned counsel for the respondent is that the claim raised by the petitioner is itself barred by the Law of Limitation. In this regard, he submits that the final bill has been signed by the parties on 27.09.2008 whereas, the arbitration has been invoked by the letter dated 03.11.2017.

Learned counsel for the petitioner refuted the above submission of

learned counsel for the respondent stating that there has been an acknowledgment of debt on the part of the respondent even as late as its letter dated 23.02.2017. This, however, is refuted by the counsel for the respondent.

Be that as it may, whether the claim raised by the petitioner would be barred by Law of Limitation is not the question to be considered by this Court while appointing an Arbitrator. This question would necessarily have to be considered by the Arbitrator, maybe as a preliminary issue. At the stage of deciding an application under Section 11 of the Act, the Court has to confine its examination only to the existence of the Arbitration Agreement. As the existence of the Arbitration Agreement and due invocation thereof is not denied by the respondent, I see no impediment in appointing an Arbitrator for adjudicating the disputes that have arisen between the parties in relation to the abovementioned Agreements.

With the consent of the parties, parties are directed to appear before the Delhi International Arbitration Centre (DIAC) on 04.09.2018 at 2.00 p.m. The DIAC shall appoint a Sole Arbitrator for adjudicating the disputes between the parties. The arbitration and the fee shall be governed by the rules of the DIAC.

With the above directions, the petition is disposed of.

Dasti.

NAVIN CHAWLA, J

AUGUST 07, 2018/Arya