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

+ ARB. A. (COMM.) 4/2018

M/S GUPTA BROS. (INDIA)

..... Petitioner

Through: Mr Arvind Nigam, Sr. Advocate with
Mr S. K. Maniktala, Mr Nikhil
Ramdev, Mr Mikhil Sharda and Mr
Mehtaab Singh Sandhu, Advocates.

versus

INDIA TOURISM DEVELOPMENT
CORPORATION LTD.

..... Respondent

Through: Mr Ravi Sikri, Sr. Advocate with Mr
Deepank Yadav, Advocate.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER

% **22.03.2018**

1. The appellant has filed the present petition under Section 37 (2) of the Arbitration and Conciliation Act, 1996 (hereafter 'the Act'), *inter alia*, impugning an order dated 12.12.2017 (hereafter 'the impugned order') passed by the Sole Arbitrator.
2. By the impugned award, the Arbitrator had rejected the petitioner's application for appointment of a Quantity Surveyor principally on two grounds. First, the Arbitrator found that the petitioner's application amounted to re-agitation of the issues that were already concluded and, therefore, was barred by *res judicata*. Second, that several years had elapsed and appointment of a Quantity Surveyor would be an exercise of futility.
3. Insofar as the first ground is concerned, there is no dispute that the same is flawed as, notwithstanding that the similar application had been moved earlier, the petitioner's application was not barred by principles of

res judicata. Insofar as the second ground is concerned, the Arbitral Tribunal's reasoning cannot be readily faulted. However, it is necessary to bear in mind that the objections to the report of the Local Commissioner are still pending consideration before the Arbitral Tribunal.

4. Mr Nigam, the learned senior counsel appearing for the petitioner states that decision on the petitioner's objection to the report of the Local Commissioner may have bearing on whether a Quantity Surveyor is required to be appointed. At this stage, this Court is not inclined to examine this issue in view of the consensus between the learned senior counsel appearing for the parties.

5. The learned senior counsel appearing for the parties agree that in the event the petitioner moves a separate application after the disposal of the petitioner's objection to the report of the Local Commissioner (who was appointed by this Court by an order dated 17.05.2010 in OMP 273/2010, captioned '*M/s Gupta Brothers India v. India Tourism Development Corporation Limited*'), the Arbitral Tribunal would consider the same uninfluenced by any observations or findings recorded in the impugned order.

6. In view of the consensus between the learned counsel appearing for the parties, it is so directed.

7. The appeal is disposed of with the aforesaid observations.

VIBHU BAKHRU, J

MARCH 22, 2018
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