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IN THE HIGH COURT OF DELHI AT NEW DELHI

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ARB.P. 129/2018 & IA No. 5241/2018

BRIDGE AND ROOF CO. (INDIA) LTD. Petitioner

Through: Mr.M.K.Ghosh, Ms.Tina Garg, Advs.

versus

GURU GOBIND SINGH INDRAPRASTH UNIVERSITY & ANR.

..... Respondents

Through: Mr.Mukul Talwar, Sr. Adv. with
Mr.Harsh Kaushik, Mr.Abhay Chatopadhyay,
Advs.

CORAM:

HON'BLE MR. JUSTICE NAVIN CHAWLA

ORDER

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27.07.2018

This petition has been filed by the petitioner under Section 11 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as the 'Act') seeking appointment of an Arbitrator for adjudicating the disputes that have arisen between the parties in relation to the Agreement No.1/EE/UWD/2006-07 dated 7th December, 2006. The Agreement contains an Arbitration Agreement in form of Clause 25 thereof.

Certain disputes having arisen, on the request of the petitioner, the respondent vide its letter dated 10th November, 2016 had appointed an Arbitrator Mr.K.N.Agrawal, Retired DG, CPWD. The Arbitrator terminated the arbitration proceedings vide order dated 17th April, 2017. The same was challenged by the petitioner before this Court by way of OMP(Comm.) No.296/2017. The petitioner vide

letter dated 20th June, 2017 invoked the Arbitration Agreement again, raising certain additional claims. Vide letter dated 5th September, 2017 the respondent had refused to appoint the Arbitrator for these claims.

As far as the petition under Section 34 was concerned, the same was converted into a petition under Section 15 of the Act and re-numbered as OMP(T) (Comm.) No.74/2017 and vide order dated 7th September, 2017 passed by this Court, the order of the Sole Arbitrator was set aside and the dispute was remanded back to the Arbitrator for adjudication on merit.

The petitioner, while filing its Statement of Claim raised even the additional claims for which it had separately invoked arbitration by letter dated 20th June, 2017 and reference of which had been rejected by the respondent vide its letter dated 5th September, 2017. The Arbitrator taking note of this fact, vide its order dated 18th January, 2018, has held that as these disputes are beyond the letter of reference, the same cannot be entertained in the arbitration proceedings. The petitioner has hence filed the present petition.

Learned senior counsel for the respondent submits that the claims now raised by the petitioner would be barred by law of limitation and in any case, cannot be raised as having been abandoned and being hit by principles analogous to Order II Rule 2 of the CPC.

In my opinion, as the existence of the Arbitration Agreement and due invocation thereof by the letter dated 20th June, 2017 by the petitioner, is not denied by the respondent, there is no impediment in appointing an arbitrator for adjudicating such disputes raised by the

petitioner. The question whether the claims of the petitioner would be barred by law of limitation or by principles analogous to Order II Rule 2 of the CPC, are questions to be determined by the Arbitral Tribunal, maybe as preliminary issues.

As Mr.K.N.Agrawal, Retired DG, CPWD is already considering certain claims made by the petitioner in relation to the contract between the parties, I deem it appropriate to appoint him as an Arbitrator for adjudicating the additional claims as well.

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

Dasti.

NAVIN CHAWLA, J

JULY 27, 2018
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