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

+ **ARB.P. 165/2018**

ANIL MEHTA

..... Petitioner

Through: Mr. Avinash Trivedi and Mr. Umesh
Kashyap, Advs.

versus

THE GENERAL MANAGER, NORTHERN RAILWAY

..... Respondent

Through: Mr. G.S. Gangwar and S. S.
Gangwar, Advs.

CORAM:

HON'BLE MR. JUSTICE NAVIN CHAWLA

ORDER

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19.07.2018

This petition has been filed under Section 11 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as the 'Act') seeking appointment of an Arbitrator to adjudicate the disputes that have arisen between the parties in relation to the Agreement dated 24.02.2012 whereunder the respondent had awarded the work of "Miscellaneous work between New Morinda to Samrala stations in connection with Chandigarh-Ludhiana BG Rail Link" to the petitioner.

The said Agreement contains an Arbitration Agreement in form of Clause 64 of General Conditions of Contract.

Disputes having arisen between the parties, the petitioner invoked the Arbitration Agreement vide its notice dated 24.07.2017. Having received no

response thereto, the present petition was filed.

Learned counsel for the respondent submits that as the petitioner had executed a No Claim Certificate dated 19.02.2015 and thereafter a Supplementary Agreement dated 25.03.2015 duly recording that he had received amounts from the respondent in full and final settlement of all his claims and that the Arbitration clause contained in the main Agreement stood discharged, the petitioner is not entitled to seek appointment of an Arbitrator. In this regard he places reliance on Judgment dated 07.02.2018 passed by the Supreme Court in Civil Appeal No. 1659/2018 ***M/s ONGC Mangalore Petrochemicals Ltd. vs. M/s. ANS Constructions Limited & Anr.***

Learned counsel for the petitioner on the other hand submits that the execution of the No Claim Certificate and the Supplementary Agreement would not discharge the Arbitration Agreement between the parties and in any case, this being question of fact, has to be determined by the Arbitral Tribunal.

In terms of Section 11(6A) of the Act, introduced in the Act by way of an amendment in 2015, this Court, in exercise of its power under Section 11 of the Act, has to confine its examination only to the existence of an Arbitration Agreement and no further. As the Arbitration Agreement between the parties is not denied by the respondent, whether it stood discharged due to execution of the No Claim Certificate and the Supplementary Agreement is a question to be determined by the Arbitral Tribunal, may be as a preliminary issue.

The Judgment of the Supreme Court in ***M/s ONGC Mangalore Petrochemicals Ltd.***, relates to a case which arose prior to the amendment of

the Act and therefore would not be applicable to the facts of the present case.

In view of the above, I see no impediment in appointing an Arbitrator for adjudicating the disputes that have arisen between the parties in relation to the above mentioned Agreement.

I appoint **Mr. Abhijat**, Advocate (R/o A-80, Defence Colony, New Delhi, Mobile No. 9811800833) as an Arbitrator to adjudicate the disputes that have arisen between the parties. The Arbitrator shall give his disclosure statement in terms of Section 12 of the Act before proceeding with the reference.

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

NAVIN CHAWLA, J.

JULY 19, 2018

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