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IN THE HIGH COURT OF DELHI AT NEW DELHI

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ARB.P. 333/2018

BASU DEV ROUT

..... Petitioner

Through: Mr.Bhupesh Narula, Ms.Rinku Narula,
Advts.

versus

AIRPORT AUTHORITY OF INDIA

..... Respondent

Through: Ms.Swati Sehgal, Mr.S.K.Singh, Advts.

CORAM:

HON'BLE MR. JUSTICE NAVIN CHAWLA

ORDER

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13.07.2018

This petition under Section 11(6) 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 the disputes that have arisen between the parties in relation to the award of construction work of boundary wall and development of area around D.V.O.R. Building C.A, Ludhiana vide Agreement No.OZ/SM(EC)DEL/LDH/12-13 vide letter dated 28.01.2013.

Disputes having arisen between the parties, the petitioner had invoked the Arbitration Agreement contained in clause 25 of the Agreement vide letter dated 14th September, 2014. The said disputes were referred by the respondent to the Arbitrator for adjudication vide letter dated 9/10th September, 2015. The petitioner filed his Statement of Claim and raised certain additional claims, which were disallowed by the Arbitrator on account of restricted reference as recorded in the

Award dated 21st July, 2016.

As even during the arbitral proceedings, the Arbitrator had informed the petitioner that he would not be adjudicating on the additional claims raised by the petitioner, the petitioner vide his letters dated 30th May, 2016, 29th June, 2016 and 22nd August, 2016, requested the respondent to refer the additional claims to arbitration. As the respondent failed to appoint an arbitrator, the petitioner filed an application under Section 11 of the Act being Arbitration Petition no.198/2017. On the objection being taken by the respondent that the petitioner had not followed the procedure prescribed in the Arbitration Agreement and approached the Dispute Resolution Committee (DRC), this Court vide its order dated 8th November, 2017 passed the following directions:-

“Per clause 25 of the agreement, if petitioner raises a dispute it needs to be referred to the Dispute Resolution Committee which was not done in this case, is the grievance of the petitioner. The learned counsel for respondent says the respondent has no objection to refer claim no. 14 to arbitration provided the petitioner apply in prescribed manner, in proper format, which he shall supply within a week to the learned counsel for the petitioner.

The learned counsel for the petitioner agrees to apply afresh in a proper format. In case the request is received by the department/ respondent it shall refer the matter to the Dispute Resolution Committee forthwith and a decision be taken within 45 days to appoint an arbitrator.”

Pursuant to the above order, the petitioner vide his letter dated 11th November, 2017 requested the respondent to refer the additional claims to the DRC.

Having received no response, the petitioner sent a request to the Chairman of the respondent for appointment of an Arbitrator vide letter dated 9th January, 2018.

The respondent, instead of appointing an Arbitrator, referred the dispute to the DRC on 24th January, 2018. The DRC fixed the first date of hearing on 19th February, 2018, on which date, the petitioner sought an adjournment due to non-availability of its consultant.

A formal Statement of Claim was filed by the petitioner before the DRC on 20th February, 2018. The respondent filed its response to the Statement of Claim on 8th March, 2018.

As no hearing was scheduled by the DRC thereafter, petitioner vide letter dated 24th March, 2018 requested the Chairman of the respondent to refer the disputes to arbitration. Having failed to receive a response, the present petition was filed by the petitioner.

The stand of the respondent is that in the letter dated 24th March, 2018, an additional claim had been raised by the petitioner and therefore, instead of referring the dispute to arbitration, the respondent filed another response before the DRC vide letter dated 10th May, 2018.

I have considered the submission made by the respondent, however, cannot agree with the same. The claim of the respondent that the petitioner had raised additional claim in its subsequent letter dated 24th March, 2018 is incorrect as it is seen that the petitioner had merely bifurcated its Claim No.1(A) and 1(B) as raised in its Statement of Claim dated 20th February, 2018 into two separate

claims being Claim No.1 and Claim No.2. No additional claim had been raised by the petitioner. Be that as it may, the admitted fact is that the DRC has not held hearing though more than 45 days have passed since the first request.

In view of the above and as 45 days' time within which the DRC was directed to take a decision has expired, I see no impediment in appointing an Arbitrator for adjudicating the claims raised by the petitioner in its letter dated 24th March, 2018.

As the earlier raised disputes were adjudicated by **Mr.B.K.Biswas**, C-39C, Gangotri Enclave, Alaknanda, New Delhi-110019, I appoint him as an Arbitrator for adjudicating claims now raised by the petitioner. He is requested to give his disclosure statement in terms of Section 12 of the Act before proceeding with the reference.

Copy of this order may be communicated to him by the counsel for the petitioner.

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

Dasti.

NAVIN CHAWLA, J

JULY 13, 2018
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