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

+ ARB.P. 544/2018

NAYAK SANITATION PVT. LTD. Petitioner
Through Mr.Sameer Mendiratta and Mr.Ankur
Chaudhary, Advs.

versus

JAIPUR GOLDEN HOSPITAL Respondent
Through Mr.Arvind Dhingra, Adv.

CORAM:

HON'BLE MR. JUSTICE NAVIN CHAWLA

ORDER

% **10.09.2018**

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 a Sole Arbitrator for adjudicating the disputes that have arisen between the parties in relation to the Work Order dated 03.01.2017 'for replacement of old fire & plumbing piping, walls, CI Pipes and butterfly etc. works of existing building outer & inner side at Jaipur Golden Hospital, Sector-3, Rohini, Delhi-110085'.

The Work Order contains an Arbitration Agreement in form of Clause 11 of the "Terms & Conditions" which reads as under:

"11. For the purpose of this contract if necessity arises, Managing Director of the Jaipur Golden Transport Company Ltd. shall appoint Sole Arbitrator, whose decision shall be final and binding."

The disputes having arisen between the parties, the petitioner instead of addressing a request for the appointment of an Arbitrator to the

Appointing Authority that is, the Managing Director of the Jaipur Golden Transport Company Ltd., vide letter dated 06.05.2018 proposed the name of Mr.Vijay Pal Rajput to be appointed as Arbitrator and called upon the respondent to give concurrence to the same. The respondent vide its letter dated 01.06.2018 stated that the request for appointment of an Arbitrator was not in terms of Clause 11 of the Work Order. The petitioner thereafter, filed the present petition.

Learned counsel for the respondent submits that as the request for appointment of the Arbitrator was not addressed to the Appointing Authority, there cannot be a case of default attributed to the Appointing Authority so as to confer the jurisdiction in this Court under Section 11(6) of the Act to appoint an Arbitrator. He further submits that the Appointing Authority, in the meantime, had appointed an Arbitrator vide its letter dated 29.08.2018.

I find merit in the submissions made by the learned counsel for the respondent. The present petition would not be maintainable as the petitioner had addressed the request for appointment of an Arbitrator not to the Appointing Authority but to the respondent itself. It cannot therefore, be said that the Appointing Authority had failed to perform the function entrusted to it.

As the Arbitrator already stands appointed by the Appointing Authority, the present petition is dismissed as not maintainable, however, leaving all the pleas of the petitioner in challenge to the Arbitrator open. There shall be no order as to cost.

NAVIN CHAWLA, J

SEPTEMBER 10, 2018/Arya