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

+ ARB.P. 475/2017 & IA Nos.8677/2017 & 8679/2017

M/S. CHENAB CONSTRUCTION COMPANY Petitioner

Through: Mr Sandeep Sharma and Mr Sarthak
Mannan, Advocates.

versus

NATIONAL HYDRO ELECTRIC POWER
CORPORATION LTD & ORS

..... Respondents

Through: Mr Satyawan Shekhawat and Mr
Saurav Agrawal, Advocates
alongwith Mr Anuj Anjanee, AM
(Law) of the respondent/NHPC.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER

% **28.02.2018**

1. The petitioner has filed the present petition under Section 11 of the Arbitration and Conciliation Act, 1996 (hereafter 'the Act'), *inter alia*, praying that a Sole Arbitrator be appointed to adjudicate the disputes that have arisen between the parties in relation to an agreement dated 30.01.1991 (hereafter 'the Contract') for "Relaunching of Kanthan Log Boom at Salal Project". The petitioner states that certain disputes arose in respect of the said works in 1994 and the petitioner sent a legal notice dated 02.02.1994.
2. The respondent foreclosed the Contract in June, 1994 to the respondent.
3. Since the petitioner was not paid the amounts due in terms of the

Contract, it pursued the respondent for releasing the outstanding payments. After exchange of some communications, the respondent released partial payments in January, 2001. Subsequently, further payments were also made in July, 2003, which, the respondent claims, fully discharged all amounts due to the petitioner. Since the petitioner did not accept the said payments as complete discharge of its claims, it invoked the arbitration clause. In response to the petitioner's request for appointment of an Arbitrator, the respondent - by letters dated 21.04.2004 and 30.04.2004 - called upon the petitioner to submit break up of individual claims along with financial implications so that an arbitrator could be appointed.

4. The petitioner states that in compliance with the aforesaid letters, by a letter dated 19.06.2004, it submitted a list of claims also indicating the financial implications for the respondent.

5. The claims made by the petitioner were rejected by the respondent by a letter dated 10.12.2004. Further, the respondent also declined to appoint an Arbitrator.

6. In view of the above, the petitioner served a notice dated 10.01.2005, once again calling upon the respondent to appoint an Arbitrator.

7. Thereafter, the petitioner filed a petition under Section 11(6) of the Jammu & Kashmir Arbitration & Conciliation Act, 1997 before the High Court of Jammu and Kashmir at Jammu seeking appointment of an Arbitrator. The said petition was finally disposed of by the High Court of Jammu and Kashmir by an order dated 22.11.2016. The Court held that since the parties had agreed that disputes be resolved by arbitration under the Act, the Court had no jurisdiction to appoint an Arbitrator, as the Act did

not extend to the State of Jammu and Kashmir.

8. In view of the above, the petitioner has filed the present petition.

9. The learned counsel for the respondent has contested the present petition on the ground of limitation. He submitted that the payments were made in the year 2003 and, therefore, the present petition was barred by limitation.

10. This Court is not persuaded to accept the aforesaid contention, as the facts clearly indicate that the petitioner had invoked the arbitration clause within time. The respondent had, by letters dated 21.04.2004 and 30.04.2004, also called upon the petitioner to submit the separate claims so that an Arbitrator could be appointed. Thereafter, a considerable time was spent by the petitioner in pursuing the petition before the High Court of Jammu and Kashmir.

11. Admittedly, the project, was to be executed in the State of Jammu and Kashmir and the bulk of the cause of action had arisen in that State.

12. The learned counsel appearing for the petitioner has also referred to the decision of the Jammu and Kashmir High Court in the matter of ***M/s K. K. Gupta & Construction Engineers (JV) v. Union of India & Ors.***, wherein the Court had entertained an application under Section 11(6) of the Jammu & Kashmir Arbitration and Conciliation Act, 1997 and appointed an Arbitrator. He states that the arbitration clause in the said matter also provided that the arbitration would be in terms of the Arbitration and Conciliation Act, 1996. The learned counsel also handed over a photocopy of the relevant clause that was applicable in that case.

13. There is no dispute as to the *bonafides* of the petitioner in pursuing its claim before that Court.

14. In view of the above, this Court is of the view that the time spent by the petitioner in pursuing the remedies before the Jammu and Kashmir High Court ought to be excluded for the purpose of determining whether the present petition is barred by limitation. Concededly, if the said period is excluded, the present petition would be within limitation.

15. Since the parties have been unable to concur on appointment of an Arbitrator, the Arbitral Tribunal is to be constituted. The learned counsel for the parties agree that the matter be referred to the Delhi International Arbitration Centre (DIAC).

16. In view of the consensus between the parties, it is directed that an Arbitrator be appointed by the DIAC. The arbitration would be conducted under the aegis of DIAC and in accordance with its Rules.

17. The parties are directed to appear before the Co-ordinator, DIAC on 12.03.2018 at 11:00 AM for further proceedings.

18. It is clarified that all contentions of the parties are reserved.

19. The petition and the applications are disposed of.

VIBHU BAKHRU, J

FEBRUARY 28, 2018
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