

\$~53

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

+ O.M.P. (T) (COMM.) 102/2018

H.S. OBEROI

..... Petitioner

Through: Mr.Ankit Jain, Mr.Siddhant Nath,
Mr.Vishal Saxena, Advs.

versus

IUP JINDAL METALS & ALLOYS LTD Respondent

Through: None.

CORAM:

HON'BLE MR. JUSTICE NAVIN CHAWLA

ORDER

%

01.10.2018

I.A. No.13547/2018 (Exemption)

Allowed, subject to all just exceptions.

O.M.P. (T) (COMM.) 102/2018 & I.A.No.13548/2018 (Stay)

1. This petition under Section 14 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as the 'Act') has been filed by the petitioner praying for termination of the mandate of the Sole Arbitrator appointed by the respondent to adjudicate the disputes that have arisen between the parties in relation to the Agreement dated 20.01.2005. The Arbitration Agreement between the parties is contained in Clause (vi) of the Agreement and is reproduced hereinbelow:

“vi. Any dispute arising out of this Agreement or Interpretation hereto shall be settled mutually by and between the Employer and the Contractor failing which, the same shall be referred to a Sole Arbitrator to be appointed by the Employer whose decision shall be final and binding on

both the Employer and the Contractor, the venue of the Arbitration shall be at New Delhi and the provisions of Conciliation and Arbitration Act, 1996 shall apply.”

2. The disputes having arisen between the parties, the petitioner invoked the Arbitration Agreement vide its notice dated 24.05.2018. The respondent, vide its reply dated 15.06.2018 stated that an Arbitrator already stood appointed to adjudicate the disputes that have arisen between the parties and in such arbitration proceedings, the petitioner had not filed any counter claim.
3. The petitioner thereafter filed a petition under Section 11 of the Act seeking appointment of an Arbitrator.
4. This Court vide its order dated 11.09.2018 allowed the petitioner to withdraw the said petition with liberty to file a fresh petition, albeit, in accordance with the law. This Court also took notice of the decision dated 21.02.2018 of this Court in OMP(T)(COMM) 101/2017 titled as ***Bhayana Builders Pvt Ltd v Oriental Structural Engineers Pvt Ltd*** holding that if the Arbitration Agreement between the parties gives power to one of the party to appoint an Arbitrator, the same would be valid and enforceable.
5. Learned counsel for the petitioner submits that the respondent could not have appointed an Arbitrator in the present case.
6. In my view this issue has already been decided by this Court in the decision of ***Bhayana Builders Pvt. Ltd.***(Supra) and though it may be correct that a Special Leave Petition challenging the said order is pending before the Supreme Court, admittedly there is no order staying the direction of said order. I being bound by the order passed in ***Bhayana Builders Pvt. Ltd.***(Supra), see no merit in the present petition. The same is accordingly

dismissed with no order as to cost.

7. This order shall however not prejudice the petitioner from raising any other objection that it has against the Arbitrator in accordance with the law.

OCTOBER 01, 2018/Arya

NAVIN CHAWLA, J