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

+ **ARB.P. 735/2017**

ERA INFRA ENGINEERING LTD. Petitioner

Through: Mr.Udit Seth, Adv.

versus

**DELHI STATE INDUSTRIAL & INFRASTRUCTURE
DEVELOPMENT CORPORATION LTD. Respondent**

Through: Ms.Anusuya Salwan, Adv.

CORAM:

HON'BLE MR. JUSTICE NAVIN CHAWLA

ORDER

% 10.05.2018

The present petition has been filed under Section 11 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as the 'Act') seeking reference of the disputes that have arisen between the parties under contract Agreement dated 12th March, 2004 for the work of construction of houses with cost effective technologies at Bhawana Industrial Complex. The said Agreement contains an Arbitration Agreement in form of Clause 25(ii).

The petitioner sought reference of the disputes to arbitration vide its letter dated 12th June, 2017. The respondent, however, vide its letter dated 4th July, 2017 refused such reference on the ground that the claims raised by the petitioner are barred by law of limitation. The petitioner has thereafter filed the present petition.

Counsel for the respondent submits that as the final bill of the petitioner was settled on 27th October, 2008 (as far as civil works are concerned) and 30th March, 2007 (as far as electrical works are

concerned), the claims raised by the petitioner are *ex facie* barred by law of limitation. Counsel for the petitioner, however, disputes the said submission and contends that the petitioner had remained at site till 2016-17 and, therefore, the claim is within the period of limitation.

In terms of Section 11(6A) of the Act, the scrutiny of this Court at this stage is to be confined only to the existence of the Arbitration Agreement. Whether the claims raised by the petitioner are barred by law of limitation or not is a question to be decided by the Arbitral Tribunal, may be as a preliminary issue. However, the same cannot be a ground to refuse appointment of an Arbitral Tribunal.

In view of the above, I appoint **Dr.Justice Mukundakam Sharma**, Retired Supreme Court Judge, Bungalow No.105, New Moti Bagh, New Delhi-110021 as the Sole Arbitrator to adjudicate the disputes that have arisen between the parties in relation to the above-mentioned Agreement. The Arbitrator shall give his disclosure statement under Section 12 of the Act before proceeding with the reference.

The petition is disposed of with the above directions with no order as to costs.

Dasti.

NAVIN CHAWLA, J

MAY 10, 2018
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