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

+ **ARB.P. 719/2017**

ALCON BUILDERS AND ENGINEERS PVT LTD. Petitioner

Through: **Mr. Sunil Goel, Ms. Supreet Bimbora
and Mr. Mayank Goel, Advocates.**

versus

NORTHERN RAILWAYS

..... Respondent

Through: **Mr. N. Prashant Kumar, Advocate.**

CORAM:

HON'BLE MR. JUSTICE NAVIN CHAWLA

ORDER

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06.03.2018

This petition has been filed under Section 11 of the Arbitration & Conciliation Act, 1996 (hereinafter referred to as the 'Act') seeking appointment of a Sole Arbitrator for adjudicating the disputes that have arisen between the parties in relation to the 'Letter of Acceptance' dated 21st October, 2010 and the consequent agreement dated 16th November, 2010 for the award of work of PI/RRI work at Jakhal, Bareta, Budhlana, Narendrapura, Mansa Stations along with block working with the adjacent stations and associated telecom works in c/w doubling in Jakhal-Mansa Section on Northern Railway.

Certain disputes have arisen between the parties, the petitioner vide its letter dated 26th April, 2017 claims to have invoked the Arbitration Agreement and sought appointment of an Arbitrator from the panel of Arbitrators of the respondent. The petitioner claims that having received no

reply, the present petition was filed by the petitioner.

The respondent has filed its response to the petition. In the reply, it is *inter alia* claimed that the letter dated 26th April, 2017 is not available in the files and records of the respondent, however, the respondent had received a letter dated 22nd September, 2017 seeking appointment of an Arbitrator, which was immediately responded to by the letter dated 26th September, 2017 asking the petitioner to submit the RCC-wise bills for PUC so that the case may be processed for appointment of an Arbitrator at the earliest. It is further submitted that these letters have been intentionally concealed by the petitioner while claiming that it had received no response to the notice invoking the arbitration.

The petitioner has filed its rejoinder in which it *inter alia* claims that the letter dated 26th April, 2017 was handed over to the concerned offices of the respondent. The stand is rather curious and is reproduced herein below:-

“The said letter was handed over to the concerned offices of mentioned officers but sometime when concerned clerk is not available then other person who receives letter refuses to sign. It, therefore, may be the reason why the said letter was not signed by the concerned persons.”

The petitioner does not state as to which officer the said letter was given, when it was given and why no receipt of the same is available with the petitioner. The case becomes more suspicious when it is seen in the light of deliberate concealment of the letters dated 22nd September, 2017 and 26th September, 2017 referred above though the present petition was filed on 06.11.2017. The petitioner has clearly not approached this Court with clean hands and is not entitled to any relief in this petition.

The letter dated 26th September, 2017 is not even mentioned in the

petition, let alone making any assertion on the same which could account as the failure of the respondent to act on the Arbitration Agreement between the parties. For exercising jurisdiction under Section 11(6) of the Act, the petitioner has to show that the respondent has failed to act as required under the appointment procedure agreed upon by the parties. In the present case, the petitioner built its cause of action on failure of respondent to respond to letter dated 26th April, 2017. Service of this notice is denied by the respondent and the petitioner has failed to prove the same. As noted above, whether the letter dated 26.09.2017 of the respondent can be construed as its failure to act as required under the appointment procedure, has not been pleaded in the petition; in fact, this letter has been intentionally concealed in the petition. Such concealment itself disentitles the petitioner to seek relief from this Court in the present petition.

In view of the above, the present petition is dismissed with cost quantified as **Rs.50,000/-** to be paid by the petitioner to the Delhi High Court Legal Services Authority within a period of four weeks from today.

NAVIN CHAWLA, J.

MARCH 06, 2018/Rekha