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

+ ARB.P. 729/2017

B.R. ARORA & ASSOCIATES PVT LTD. Petitioner
Through: Mr.Vaibhav Dang, Adv.

versus

AIRPORTS AUTHORITY OF INDIA Respondent
Through: Mr.Digvijay Rai and Mr.Pulkit Tyagi,
Advs.

CORAM:
HON'BLE MR. JUSTICE NAVIN CHAWLA

ORDER
% **16.04.2018**

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 of Resurfacing of runway and allied pavement works at Birsa Munda Airport, Ranchi vide Respondent's letter no. AAI/Ranchi/Rwy Re-surfacing/Engg. (C)/W -1/ 2830 dated 10.09.2008.

The work was completed on 14.01.2011 and the final bill, as per the respondent was paid on 31.03.2011.

The petitioner claimed that the entire amount due and payable under the contract has not been paid by the respondent, and vide letter dated 10.07.2014 demanded the pending dues. The respondent, vide letter dated 25.11.2014 denied such claim of the petitioner with respect to the withheld amount.

The petitioner, vide its letter dated 14.01.2015 sought reference of its claim to the Disputes Resolution Board (DRB) in terms of Clause 57(a)(i) of the General Condition of the Contract-44 of the Contract Agreement. Various correspondences were exchanged between the parties, however, for the present petition it is only to be noted that the disputes were not referred by the respondent to the DRB on the ground that the claim of the petitioner with respect to the final bill is barred by the Law of Limitation and as far as its claim for escalation is concerned, the petitioner may apply for the same to be referred to the DRB. The petitioner, however, by its letter dated 11.10.2017 reiterated that its claim as set out in that letter, should be referred to the arbitration for resolution.

As the claims were not referred by the respondent to an arbitrator, the present petition was filed seeking appointment of a Sole Arbitrator.

As far as the existence of the Arbitration Agreement and the invocation thereof by the letter dated 23.09.2015 is concerned, the same cannot be denied by the respondent. Whether the claim raised by the petitioner would be barred by the Law of Limitation or otherwise not maintainable, is a question to be decided by the Arbitrator and not by this Court in exercise of its power under Section 11 of the Act.

Learned counsels for the parties submit that the parties may be referred to the Delhi International Arbitration Centre (DIAC) for the appointment of a Sole Arbitrator for adjudicating the disputes that have arisen between the parties in relation to the abovementioned Agreement. They further submit that the DIAC may appoint a person with experience in Civil Engineering as a Sole Arbitrator.

Accordingly, parties are directed to appear before the DIAC on 1st May, 2018 at 2.00 p.m. The DIAC shall appoint a Sole Arbitrator for adjudicating the disputes that have been arise between the parties in relation to the abovementioned Work Order and the Agreement. All rights and contentions of the respondent shall remain open in such arbitration proceedings. The Arbitration and the fee shall be governed by the DIAC rules.

The petition is allowed in the above terms with no order as to cost.

Dasti.

NAVIN CHAWLA, J

APRIL 16, 2018/Arya