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

+ ARB.P. 768/2017

BKFC & COMPANY

..... Petitioner

Through

Mr.L.B. Rai, Mr.Sumit Nagpal and
Mr.Mohit Kumar Sharma, Advs.

versus

COMMERCIAL ENGINEERING AND BODY BUILDERS LTD

..... Respondent

Through

Mr.Akshay Sapra and Mr.Abhijeet
Swaroop, Advs.

CORAM:

HON'BLE MR. JUSTICE NAVIN CHAWLA

ORDER

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10.01.2018

This petition under Section 11 of the Arbitration & Conciliation Act, 1996 (hereinafter referred to as the 'Act') has been filed by the petitioner seeking adjudication of the disputes that have arisen between the parties in relation to the Letter of Intent dated 03.11.2010 for civil construction work for railway plant at Deori of the respondent.

It is submitted that the petitioner had invoked the Arbitration Agreement as contained in Clause 6.23 of the Letter of Intent read with tender document, however, the respondent in spite of receipt of the notice, has not agreed upon the appointment of an arbitrator.

Learned counsel for the respondent submits that the petitioner had earlier filed a petition under Section 11 of the Act being Arbitration Petition No.61/2017, which was withdrawn by the petitioner vide order dated

08.05.2017 as the respondent had shown that the invocation was also with respect to the disputes in relation to the Work Order dated 10.11.2011 and that the said Work Order made all such disputes subject to the jurisdiction of the Courts of Jabalpur. He, therefore, submits that the present petition would not be maintainable before this Court.

Learned counsel for the petitioner, in rebuttal, submits that his claims are not under the Work Order dated 10.11.2011 and he shall confine all his claims only with respect to the above Letter of Intent. He submits that after passing of the above mentioned order dated 08.05.2017 of this Court in Arbitration Petition No.61/2017, the petitioner had issued a fresh notice of invocation dated 04.07.2017 confining his claims only with respect to the Letter of Intent.

It is next contended by the learned counsel for the respondent that the claims as raised by the petitioner would be barred by law of Limitation. In my opinion, this is a matter to be adjudicated by the Arbitrator, may be as a preliminary issue. However, this cannot be a ground for refusing to appoint an Arbitrator for adjudication of the disputes by this Court in exercise of its powers under Section 11 of the Act.

As far as the plea of the respondent that the claims raised by the petitioner would fall under the Work Order dated 10.11.2011 is concerned, this issue has to be decided by the Arbitrator once the Statement of Claim is filed before the Arbitrator by the petitioner. At present, the statement made by the learned counsel for the petitioner that no claim under the said Work Order will be raised before the Arbitrator should suffice, making it clear that if any claim is raised with respect to the said Work Order, the same would be beyond the terms of the reference and liable to be rejected.

In view of the above and with the consent of the parties, I appoint Justice R.C. Chopra (Retd.), N-7, Greater Kailash-I, New Delhi-110048, Mob. No.9818097777 as a Sole Arbitrator to adjudicate the disputes that have arisen between the parties in relation to the above mentioned Letter of Intent. The Arbitrator shall give to the parties the disclosure in terms of the Section 12 of the Act before proceedings with the reference.

All contentions of either party shall remain open before the Arbitrator.

The petition is allowed in the above terms.

Dasti.

NAVIN CHAWLA, J

JANUARY 10, 2018/Arya