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

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Date of decision: 25.09.2019

+ ARB.P. 547/2019

QUAZAR INFRASTRUCTURE PVT. LTD.Petitioner

Through: Mr. Faiyaz Hasan, Advocate

versus

NATIONAL AGRICULTURE
CORPORATIVE MARKETING FEDERATION
OF INDIA LTD. (SOCIETY REGISTERED
UNDER THE MULTI STATE CO-OPERATIVE
SOCIETIES ACT)

.....Respondent

Through: Mrs. Gouri K. Mohanti and Ms. Anu
Gupta, Advocates

CORAM:

HON'BLE MS. JUSTICE JYOTI SINGH

JYOTI SINGH, J. (ORAL)

1. This is a petition under Section 11 of the Arbitration & Conciliation Act, 1996 ('Act') for appointment of a Sole Arbitrator for adjudication of disputes between the parties related to a work order dated 14.02.2017.
2. Learned counsel for the petitioner submits that the initial work under the work order was completed and in fact the petitioner had executed more work than what was to be executed. Not having received the payments for the extra work done, the petitioner invoked the Arbitration Clause on three occasions viz. 03.01.2017, 01.02.2018 and finally on 07.03.2019, for appointment of an Arbitrator. He submits

that despite the said notices, the respondent had failed to appoint the Arbitrator. The Arbitration Clause in the agreement reads as under:

"ARBITRATION

Any disputes arising from this agreement shall be referred to Arbitrator appointed by the Managing Director of NAFED in accordance Arbitration and Conciliation Act, 1996 as amended from time to time where decision will be final and binding."

3. The respondent has filed a counter affidavit. Learned counsel for the respondent submits that increased quantity of work done does not make out a claim for Arbitration. It is submitted that the petition is not maintainable as the claim made for "increased quantity of work done does not prima facie make out a claim for arbitration". It is further submitted that Billing of Quantity ('BOQ') clearly mentions quantity as per actual site and the rate on lumpsum basis. Her contention is that for entertaining an application under Section 11 of the Act, there ought to be in existence, prima facie, a bonafide arbitrable claim qua the contract.
4. I have heard the learned counsels for the parties.
5. The Act was amended with effect from 23.10.2015 and sub-section 6A was added to Section 11. The said sub-section 6A clearly stipulates that while considering an application under Section 11(6) Court would confine to the examination of the existence of an arbitration agreement. Section 11(6A) reads as under:

"11.(6A) The Supreme Court or, as the case may be, the High Court, while considering any application under sub-section (4) or sub-section (5) or sub-section (6), shall,

notwithstanding any judgment, decree or order of any Court, confine to the examination of the existence of an arbitration agreement.”

6. A recent judgment of the Apex Court in the case of ***M/s Mayavati Trading Pvt. Ltd. Vs. Pradyut Deb Burman***, Civil Appeal No. 7023/2019 decided on 5.9.2019 has reinforced that the Court while deciding a petition under Section 11 of the Act has to consider only the existence of the Arbitration Agreement between the parties. Relevant portion of the judgment of the Apex Court is as under:

“10) This being the position, it is clear that the law prior to the 2015 Amendment that has been laid down by this Court, which would have included going into whether accord and satisfaction has taken place, has now been legislatively overruled. This being the position, it is difficult to agree with the reasoning contained in the aforesaid judgment as Section 11(6A) is confined to the examination of the existence of an arbitration agreement and is to be understood in the narrow sense as has been laid down in the judgment Duro Felguera, S.A. (supra) – see paras 48 & 59.

11) We, therefore, overrule the judgment in United India Insurance Company Limited (supra) as not having laid down the correct law but dismiss this appeal for the reason given in para 3 above.”

7. Respondent has not denied the existence of the Arbitration Clause between the parties. Respondent has also not denied the receipt of notice invoking arbitration sent by the petitioner.
8. Having considered the contention of the parties, in my view, there is no merit in the objection raised by the respondent in view of the

Arbitration and Conciliation (Amendment) Act, 2015 and the judgment of the Apex Court in *M/s Mayavati Trading Pvt. Ltd. (supra)*.

9. I hereby appoint Mr. Pradeep Chadha, Retired District Judge, as Sole Arbitrator to adjudicate the disputes between the parties.
10. The address and mobile number of the learned Arbitrator is as under:

Mr. Pradeep Chadha,
Former District and Sessions Judge
R/o 37/29, East Patel Nagar, New Delhi-110008,
Mobile: 9910384665
11. The learned Arbitrator shall give disclosure under Section 12 of the Act before entering upon reference.
12. Fee of the Arbitrator shall be fixed as per Fourth Schedule of the Act.
13. The petition is allowed in the aforesaid terms.

SEPTEMBER 25, 2019

v

JYOTI SINGH, J