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

+ ARB.P. 549/2019 & I.A.16975/2019

2 BHADRA INTERNATIONAL
(INDIA) PVT. LTD. & ORS.

..... Petitioners

Through: Mr. Ashish Mohan, Mr. Akshit Mago
and Mr. Mohit Kumar, Advocates.

versus

AIRPORT AUTHORITY OF INDIA

..... Respondent

Through: Mr. Sonal Kumar Singh and Mr.
Rajat Dasgupta, Advocates.

+ ARB.P. 550/2019 & I.A.16977/2019

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HON'BLE MR. JUSTICE J.R. MIDHA

ORDER

% **11.03.2020**

1. The petitioners are seeking appointment of an arbitrator under Section 11 of the Arbitration and Conciliation Act.
2. The arbitration agreement between the parties is contained in clause 78 of the licence agreement dated 29th November, 2010. The petitioners invoked the arbitration vide notice dated 18th September, 2018. The arbitration agreement as well as the invocation notice are not disputed by the respondent.
3. Learned counsel for the respondent submits that the respondent replied to the invocation notice. Learned counsel for the respondent opposes the appointment of the arbitrator on the ground that the petition is barred by

principle of *res judicata* as the disputes between the parties were adjudicated by a sole arbitrator vide award dated 30th July, 2018.

4. Learned counsel for the petitioners urged at the time of hearing that the disputes raised in these petitions arose after the arbitration award dated 30th July, 2018. It is submitted that the learned arbitrator, vide award dated 30th July, 2018 dismissed the petitioner's claims as well as the respondent's counter claims and, therefore, the respondent had no right to encash the bank guarantee and forfeit the cash deposits. However, the respondent illegally encashed the bank guarantee and forfeited the cash deposits whereupon the petitioners invoked the arbitration agreement to seek refund of the bank guarantee amount and cash deposits. Learned counsel further submits that there is no merit whatsoever in the respondent's objection of *res judicata*. Without prejudice, it is submitted that the aforesaid objection has to be considered by the learned arbitrator. Reliance is placed on ***Duro Felguera, S.A. v. Gangavaram Port Limited***, (2017) 9 SCC 749 and ***Mayavati Trading (P) Ltd. v. Pradyut Deb Burman***, (2019) 8 SCC 714.

5. Learned counsel for the petitioner urged at the time of hearing that the learned arbitrator passed a 'Nil' award dated 30th July, 2018 against which both the parties have filed the objections which are pending adjudication. It is submitted that the respondent encashed the bank guarantee and forfeited the cash deposits in view of the petitioner's admissions in the arbitration proceedings and certain findings in favour of the respondent.

6. This Court is of the view that as there is no impediment in the appointment of the arbitrator by this Court as there is a valid arbitration agreement between the parties and the disputes between the parties relating to the encashment of the bank guarantee and forfeiture of the cash deposits arose after the arbitration award dated 30th July, 2018. The disputes raised by the petitioner were not the subject matter of the earlier arbitration

proceedings and, therefore, could not have been adjudicated in the earlier arbitration proceedings.

7. The petitions are allowed and Justice G. S. Sistani, former Judge of this Court is appointed as a sole arbitrator to adjudicate the disputes between the parties. All the contentions raised by the respondent shall be considered by the learned arbitrator in accordance with the law.

8. The learned arbitrator shall ensure the compliance of Section 12 read with Fifth, Sixth and Seventh Schedule of Arbitration and Conciliation Act, 1996 before commencing the arbitration.

9. The fees of the arbitrator shall be according to Fourth Schedule of the Arbitration and Conciliation Act, 1996.

10. Copy of this order be sent to the learned arbitrator.

11. Copy of this order be given *dasti* to counsel for the parties under the signature of the Court Master.

J.R. MIDHA, J.

MARCH 11, 2020
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