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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **ARB. A. (COMM.) 1/2019 & I.A. No.359/2019 (Stay)**
AIRPORTS AUTHORITY OF INDIA Petitioner
Through **Mr.Sonal Kr. Singh andn Mr.Rajat**
Dasgupta, Advs.

versus

M/S MODERN RADIO HOUSE (I) PVT. LTD. Respondent
Through **Mr.Rakesh Khanna and**
Mrs.Nabhanya Sharma, Advs.

CORAM:

HON'BLE MR. JUSTICE NAVIN CHAWLA

ORDER

% **06.02.2019**

1. This appeal has been filed by the appellant challenging the orders dated 10.02.2016 and 03.11.2018 passed by the Sole Arbitrator(s). The orders are passed by two different Sole Arbitrators as earlier Arbitrator, who had passed the order dated 10.02.2016 had recused himself from the proceedings and a new Arbitrator has been appointed, who passed the order dated 03.11.2018.

2. By the order dated 10.02.2016, the Sole Arbitrator, while adjudicating the application filed by the Appellant seeking inspection of the site of work, *inter-alia* observed as under:

“9. ii. Risk & cost damages are not part of the present Arbitration which needs a reference to another arbitrator enlarging the scope of present Arbitration by the appointing authority.”

3. The Appellant filed an application seeking modification of this order and also by a separate application sought amendment in its Statement of Defence and permission to raise a Counter Claim. The Sole Arbitrator, by the Impugned Order dated 03.11.2018 has rejected both the applications.

4. Learned counsel for the Appellant fairly submits that as far as the order rejecting the amendment application is concerned, the present appeal would not be maintainable and prays for leave to challenge the said order alongwith its challenge to the main Award, if at all so required, under application under Section 34 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as the 'Act').

5. As far as the counter claim is concerned, learned counsel for the Appellant submits that again appropriate remedy for the Appellant is to be in form of application under Section 34 of the Act.

6. Appellant shall be free to challenge the order rejecting the amendment application and the counter claim in accordance with the law.

7. As far as the challenge to the rejection of the modification application is concerned, learned counsel for the respondent fairly submits that without prejudice to the rights and contentions of the respondent, as the disputes have to be adjudicated on the basis of the pleadings made by the Appellant in its original Statement of Defence, the Arbitrator may adjudicate on the disputes without being in any manner influenced by the observations made by the earlier Arbitrator in the Impugned Order dated 10.02.2016.

8. In view of the submissions made by the learned counsel for the respondent, nothing survives in this appeal. The same is disposed of leaving the parties to bear their own cost.

NAVIN CHAWLA, J

FEBRUARY 06, 2019/Arya