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

+ O.M.P. (T) (COMM.) 21/2021

UNION OF INDIA

..... Petitioner

Through: Mr. Praveen Kumar Jain,
Ms. Rashmi Kumar, Ms. Shalini
Jha, Advocates [9871278525].

versus

M/S THE MARWAH COMPANY

..... Respondent

Through: None.

CORAM:

HON'BLE MR. JUSTICE PRATEEK JALAN

ORDER

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20.09.2022

1. By way of this petition under Section 14 of the Arbitration and Conciliation Act, 1996 [“the Act”], the petitioner-Union of India [“UOI”] seeks following reliefs:-

“a. allow the present petition and terminate the mandate of Ld. Sole Arbitrator Shri N. P. Kaushik, ADJ (Retd.) under Section 14 of the Arbitration and Conciliation Act, 1996; and

b. appoint a substitute Arbitrator as per the terms of the agreement between the parties i.e. an engineer by qualification; and/or

c. pass any other or further order as this Hon'ble Court deems fit and proper in the facts and circumstances of the case in the interest of justice.”

2. The petition arises out of arbitration proceedings between the

parties under a Contract Agreement bearing No. CEB/MRT/11 of 89-90, dated 13.05.1989 [“the Agreement”], for provision of RCC Overheads water tank storage tank reservoir at Meerut, Uttar Pradesh.

3. The arbitration proceedings in question commenced pursuant to an order dated 03.03.2020 in ARB.P. 872/2019. By the said order, a former Additional District Judge was appointed as the Arbitrator to adjudicate the disputes between the parties. The UoI, which is the petitioner herein, was represented in the said petition also. The learned Arbitrator was *inter alia* directed to ensure compliance of Section 12 of the Act, and the proceedings were to be conducted under the aegis of the Delhi International Arbitration Centre, Delhi High Court, Shershah Road, New Delhi- 110503 [“DIAC”].

4. The contention of the petitioner in this petition is that the UoI has not received any notice of the arbitral proceedings pursuant to the order dated 03.03.2020.

5. Notice of this petition was issued on 23.02.2021. Although the respondent has not entered appearance, a reply [unsupported by affidavit/statement of truth] has been filed on its behalf on 27.12.2021, stating that the statement of claim filed by the respondent herein has been served upon the Chief Engineer, Bareilly Zone, Uttar Pradesh, and was acknowledged by a letter dated 03.09.2021, issued by the Chief Engineer.

6. By an order dated 27.04.2022, a report was called for from the Co-ordinator, DIAC, for the following purpose:-

“4. Considering the above state of affairs, before proceeding further in the matter, the Co-ordinator, DIAC is directed to file a report as to the present status of the arbitral proceedings in Case Reference No. DAC/2773/03-

20. *The report should specify if any disclosures, as required under section 12 of the A&C Act, have been furnished by the learned Sole Arbitrator appointed by this court.”*

7. Further to the order dated 27.04.2022, a Report has been received from the Co-ordinator of DIAC, which reads as follows:

“4. The preliminary hearing in the matter was fixed by the Ld. Arbitrator on 20.04.2021 through Video Conferencing. Notices dated 23.03.2021 for the Preliminary hearing were issued to the parties by the DIAC on 25.03.2021. Copy of notice dated 23.03.2021 for preliminary hearing is filed herewith as ANNEXURE-C. The preliminary hearing was conducted on 20.04.2021. The statement of claims was filed by the Claimant (M/s The Marwah Company) on 02.05.2021.

5. The petitioner herein vide its letter dated 03.09.2021 sent via email informed the DIAC about the present proceedings. It was also stated that no letter has been received till date from the Sole Arbitrator that he has entered into the reference. It was also requested to postpone the next date of hearing before the Ld. Arbitrator since the present proceedings are pending before this Hon'ble Court. Copy of letter dated 03.09.2021 is filed herewith as ANNEXURE-D.

*6. The Ld. Arbitrator vide its order dated 06.09.2021 directed the DIAC to convey to the parties by way of a formal letter that he has entered upon the reference and the pleadings are being completed. Copy of order dated 06.09.2021 is filed herewith as ANNEXURE-E. DIAC vide its email dated 09.09.2021 informed the parties that **Mr. N.P. Kaushik, ADJ, Retd. (Sole Arbitrator) has entered upon the reference on 20th of April, 2021 and the pleadings are being completed.** Copy of email dated 09.09.2021 of DIAC and the Declaration of Acceptance and statement of Independence of the Ld. Arbitrator are filed herewith as ANNEXURE-F (Colly.). The*

Declaration of Acceptance and statement of Independence was received from the Ld. Arbitrator at DIAC during the period when the physical filings were not being accepted by the Centre and the complete staff was not attending office. The Centre probably on account of suspension of physical hearings and posting of minimal staff, the entry/noting as to Declaration might have been missed.

7. The statement of defence is not yet filed by the respondents to the arbitration proceedings i.e. Petitioner herein. Therefore, the arbitration proceedings are at the stage of completion of pleadings and the next date hearing is fixed on 23.09.2022. The orders passed by the Ld. Arbitrator in the arbitration proceedings are filed herewith as ANNEXURE-G (Colly).”

8. It appears from the Report of DIAC that the first hearing was, in fact, held on 20.04.2021, for which notices dated 23.03.2021 were issued to the parties on 25.03.2021.

9. The UoI contends that this was much belated, and, in fact, the notice was issued after the filing of the present petition, although, neither DIAC, nor the learned Arbitrator, had notice of this petition at that stage. As the COVID-19 pandemic started soon after the order of this Court appointing the arbitrator, and the functioning of DIAC was also severely restricted as a consequence thereof, I am of the view that the mandate of the Arbitrator is not required to be terminated on this ground.

10. The Report also demonstrates that the learned Arbitrator has held six sittings since 20.04.2021 [five video conference hearings and one physical hearing]. However, the UoI has not filed its statement of defence before the learned Arbitrator till today. The orders of the learned Arbitrator in this regard have been annexed to the Report of DIAC. The Report shows that, in the absence of statement of defence of the UoI, the

matter remains pending at the stage of completion of pleadings, and the next date of hearing before the learned Arbitrator is 23.09.2022.

11. Mr. Praveen Kumar Jain, learned counsel for the petitioner, submits that the statement of defence has not been filed due to the fact that the correspondences from DIAC have been addressed to the Directorate General of Contract Management [*The Engineer-in-Chief Branch, Integrated Headquarter of MoD (Army), Kashmir House, Rajaji Marg, New Delhi-110001*] instead of the Chief Engineer, Bareilly Zone, Uttar Pradesh, which is the party to the contract. It is up to the UoI to take steps before the learned Arbitrator for a correction of the record, and for extension of time, which the learned Arbitrator may consider on its own merits, in accordance with law, including as to whether an order of costs ought to be imposed against the UoI as a condition for filing of the statement of defence at this stage. This Court has not expressed any view on this aspect.

12. Mr. Jain points out that the Declaration of Acceptance and Statement of Independence filed by the learned Arbitrator [annexed to the report of DIAC] is incomplete, inasmuch as the exact number of ongoing arbitrations have not mentioned, and the declaration is undated. The Report of DIAC also does not state the date upon which it was received.

13. In these circumstances, I am of the view that, in the interest of justice, the learned Arbitrator be requested to furnish a fresh declaration, correctly specifying all the information required to be disclosed.

14. No other orders are called for in this petition.

15. The UoI is directed to enter appearance before the learned Arbitrator on the next date of hearing i.e. 23.09.202, and make its case for

extension of time for filing of the statement of defence, if it is so advised. _

16. The petition is disposed of with these directions.

17. A copy of this order be sent by the Registry to the Co-ordinator of DIAC expeditiously, so that it can be placed before the learned Arbitrator at the hearing on 23.09.2022.

PRATEEK JALAN, J

SEPTEMBER 20, 2022

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Click here to check corrigendum, if any