

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **OMP No. 133/2002 and Arb. P. No. 31/2003**
% **Date of Decision: January 19, 2009**

Sanjeev Khokha Petitioner

! Through: Mr. Rajeev Mehra, Advocate

Versus

\$ Ircon International Ltd.

.....Respondents

^ Through: Mr. K.R. Gupta and Ms. Kiran
Dharam for respondent No. 1
None for respondent No. 2.

CORAM:

HON'BLE MR. JUSTICE S.N. AGGARWAL

1. Whether reporters of Local paper may be allowed to see the judgment?
2. To be referred to the reporter or not?
3. Whether the judgment should be reported in the Digest?

S.N.AGGARWAL, J (ORAL)

Both these petitions are taken up for disposal by this common order with the consent of counsel for both the parties.

2 The petition being OMP No. 133/2002 is a petition filed by the petitioner (hereinafter to be referred as the 'Contractor') under Section 9 of the Arbitration and Conciliation Act, 1996. The case

being Arb. P. No. 31/2003 is an application filed by the Contractor for appointment of an Arbitrator under Section 11(6) of the Arbitration and Conciliation Act for adjudication of disputes that have arisen between the parties under the contract in question dated 12.04.1997.

3 Respondent No. 1 vide letter of indent dated 12.04.1997 had awarded a contract to the Contractor for constructing 'guest house and office block' at the National Agricultural Science Centre Complex, Pusa Complex, New Delhi. At the time contract was awarded, the firm to whom the contract in question was awarded was a partnership firm duly registered under the Partnership Act, 1932. The petitioner/ contractor Mr. Sanjeev Khokha along with Mr. Suresh Khokha and Mr. R.K. Kapoor was the partner of the contractor firm. While the contract work was in progress, two of the partners of the contractor firm namely Mr. Suresh Khokha and Mr. R.K. Kapoor resigned from the firm and in terms of agreement between them, the business under the same name of contractor firm was succeeded by Mr. Sanjeev Khokha who has filed these petitions in his capacity as sole proprietor of the contractor firm. Mr. Suresh Khokha and Mr. R.K. Kapoor, erstwhile partners of the contractor firm, were present before the Court when the matter was

taken for hearing by me on 07.01.2009, 14.01.2009 & 15.01.2009. Both erstwhile partners of the contractor firm who attended the hearing along with Mr. Sanjeev Khokha confirmed to the Court about their having resigned from the contractor firm and also about Mr. Sanjeev Khokha succeeding to the business of the contractor firm after their resignation from the firm. There was dispute between the parties regarding the date on which Mr. Sanjeev Khokha succeeded to the business of the contractor firm. The liability of the partners of a registered partnership firm is joint and several in view of provisions contained in Section 25 read with Section 32 of the Partnership Act, 1932. Since there was a dispute about the date of dissolution of the contractor firm and also as there was a dispute about the date on which Mr. Sanjeev Khokha succeeded to the business of contractor firm, both the erstwhile partners Mr. Suresh Khokha and Mr. R.K. Kapoor who attended the hearing gave a statement to the Court that in case any award is passed by the Arbitrator against the contractor firm, respondent No. 1 may enforce the said award not only against Mr. Sanjeev Khokha who has filed these petitions but also against them (namely Mr. Suresh Khokha and Mr R.K. Kapoor) as well being the erstwhile partners of the contractor firm. On this statement being made by

erstwhile partners of the contractor firm, counsel for both the parties have agreed for passing of a consent order in both these petitions.

4 In terms of consent given by the counsel for the parties on instructions from their clients, the petitioner/ contractor has agreed to deposit the FDRs to the tune of Rs.2,41,35,092/- in the name Registrar General of this Court so as to secure the payment of amount of the bank guarantees furnished by the contractor firm to respondent No. 1 in the event of an award being passed by the Arbitrator in favour of respondent No. 1. It is submitted by Mr. Mehra, learned counsel appearing on behalf of the petitioner/ contractor that his client shall furnish a fresh FDR in the sum of Rs.64 lacs in favour of Registrar General of this Court within four weeks from today and on instructions from his client, he further submits that the FDRs for the balance amount out of total amount of Rs.2,45,35,092/- are lying with respondent No. 2 i.e Punjab National Bank, Sansad Marg Branch, New Delhi and a request is made that this Court may direct the concerned Branch Manager to endorse these FDRs for the balance amount (Rs.2,45,35,092 minus Rs.64,00,000/- = Rs.1,81,35,092) in favour of Registrar General of this Court forthwith. This suggestion given by Mr. Mehra is

acceptable to Mr. K.R. Gupta, learned counsel appearing on behalf of respondent No. 1. Accordingly, the petitioner/ contractor is directed to furnish a fresh FDR of Rs.64 lacs in the name of Registrar General of this Court within four weeks from today and the Branch Manager, Punjab National Bank, Sansad Marg Branch, New Delhi is directed to endorse the FDRs for the balance amount ((Rs.2,45,35,092 minus Rs.64,00,000/- = Rs.1,81,35,092)) lying with him in the name of the contractor firm. On these FDRs being endorsed by Punjab National Bank in favour of Registrar General of this Court, the lien of respondent No. 1 with regard to bank guarantees to the tune of Rs.2,45,35,092/- furnished to it by the contractor firm shall stand discharged automatically. The amount in the form of FDR to be deposited with the Registrar General of this Court in the present case shall be dealt with in terms of the award that may be given by the learned arbitrator.

5 Clause 67 of the contract between the parties contains mechanism for settlement of dispute between the parties under the contract in question. It is admitted by both the parties that the disputes in fact have arisen between them under the contract in question and they have agreed for getting these disputes decided through the process of arbitration. Since the contractor firm had not

exhausted the mechanism for settlement of disputes provided in Clause 67 of the contract, counsel for both the parties have agreed that Mr. A.K. Sarin, Engineer Member (retd.), DDA, R/o 14/1, Tilak Marg, New Delhi-110001 (Mobile No. 9810032292) be appointed as the sole arbitrator for deciding the disputes between the parties under the contract in question. The name of Mr. A.K. Sarin has been selected by the counsel for the petitioner Mr. Sanjeev Khokha out of list of 29 names of arbitrators furnished by respondent No. 1. Needless to say that both the parties to the contract will be entitled to make their claims and counter claims against each other and they have to be decided by the sole arbitrator Mr. A.K. Sarin. The arbitrator shall decide the disputes between the parties under the contract in question in accordance with law after giving opportunity of hearing to both of them. Learned arbitrator shall fix his own fee as per rules and any fee to be fixed by the learned arbitrator has to be shared equally by both the parties.

A copy of this order be sent to the learned arbitrator for information and necessary compliance. The parties are directed to appear before the learned arbitrator for necessary directions at 5:00 PM on 25.02.2009.

In view of the above, both these petitions stand disposed of leaving the parties to bear their own costs.

Order dasti to both the parties through their counsel under the signatures of the Court Master.

January 19, 2009
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S.N.AGGARWAL
[JUDGE]

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For orders, see file of OMP No. 133/2002.

January 19, 2009
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S.N.AGGARWAL
[JUDGE]