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IN THE HIGH COURT OF DELHI AT NEW DELHI

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O.M.P.(T) 5/2015

KNOWLEDGE INFRASTRUCTURE SYSTEMS
PVT. LTD

..... Petitioner

Through Ms Monika Garg, Adv.

versus

COMMERCIAL CARGO LINKERS (T) PVT. LTD
& ORS

..... Respondents

Through Mr Snehasish Mukherjee, Adv.

CORAM: JUSTICE S. MURALIDHAR

ORDER

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19.01.2017

1. The Court has perused the order dated 27th April, 2016 passed by Mr. Justice A.K. Patnaik, Sole Arbitrator appointed in place of Mr. Justice Y.K. Sabharwal by the order dated 12th February, 2015 of this Court.

2. A peculiar problem has arisen on account of fees having to be deposited by the Petitioner/Claimant twice over.

3. Initially by an order dated 28th September 2011 in Arb. Petition 102 of 2011 Justice Y.K. Sabharwal, former Chief Justice of India was appointed Sole Arbitrator. He then called upon both the Petitioner and the Respondents to deposit their respective share of the fees and expenses on the claim and counter-claim. The Petitioner deposited with Justice Sabharwal a sum of Rs. 5,42,430 on the claim and Rs. 5,19,284 on the counter-claim. Likewise the

Respondent too deposited its share of the fees and expenses on the claim and counter-claim. After the cross-examination of the sole witness for the Claimant was completed, Justice Sabharwal by e-mail dated 9th August 2014 recused on medical grounds.

4. Thereafter, the present petition was filed in which by order dated 12th February 2015 Justice A. K. Patnaik, a former Judge of the Supreme Court of India was appointed as Sole Arbitrator in place of Justice Sabharwal and to continue the proceedings from the stage where Justice Sabharwal had recused himself. This time the Court directed that the arbitration would take place under the aegis of the Delhi International Arbitration Centre (DAC).

5. Thereafter the parties were called upon by the DAC to deposit their respective share of fees and expenses on the claim and counter-claim. While the Respondents declined to do so on the ground that they had already deposited their share with Justice Sabharwal, the Petitioner deposited with the DAC Rs. 6,15,201/- towards its share of fee and expenses and a further Rs. 6,15,201 towards the share of fees and expenses of the Respondents on the claim. No amount was, however, deposited with DAC on the counter-claim of the Respondents.

6. Accordingly, before Justice Patnaik the Claimant submitted that he could take up only the claims and not the counter-claims. The contention of the Respondents, on the other hand, was that since they have already paid their share of fee on the claim as well as counter-claim to Justice Y.K. Sabharwal directly, their counter-claim cannot be terminated on the basis of the DAC

(Administrative Costs and Arbitrators' Fees) Rules ('DAC Fees Rules').

7. In his order dated 27th April 2016 Justice Patnaik noted that there is no provision in the DAC Fees Rules to meet such contingency. It is in these circumstances that he directed the DAC to refer the matter to this Court.

8. Ms. Monika Garg, learned counsel for the Petitioner submits that in the event that the Petitioner is refunded the entire fees deposited by it with the DAC, both parties are willing to request Justice Patnaik to continue the arbitration by fixing his own fees. Mr. Snehasish Mukherjee, learned counsel for the Respondent has no objection to this suggestion and states that in that event, the Respondent will pay without demur its share of fees on the claims and counter-claims as may be determined by Justice Patnaik.

9. In that view of the matter, the Court modifies the order dated 12th February 2015 by directing that the arbitration by Justice Patnaik will not take place under the aegis of the DAC. Justice Patnaik will fix his own terms and communicate them to the parties. The DAC will refund to the Petitioner the amount deposited by it with the DAC i.e. Rs. 6,15,201 plus Rs. 6,15,201, within a period of two weeks from today. The parties will thereafter appear before Justice A.K. Patnaik on a date and time convenient to him and will pay the fees and expenses as directed by him both for the claim as well as counter-claim.

10. A copy of this order be delivered forthwith to Justice A.K. Patnaik as

well as the Additional Co-ordinator DAC forthwith.

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

S.MURALIDHAR, J

JANUARY 19, 2017

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