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

+ **ARB.P. 224/2016**

SARVESH SECURITY SERVICES PVT. LTD Petitioner
Through **Ms.Sneha Singh, Adv.**

versus

DIRECTORATE OF HEALTH SERVICES Respondent
Through **Mr.Sanjay Ghose, Adv.**

CORAM:

HON'BLE MR. JUSTICE MANMOHAN SINGH

ORDER

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31.05.2016

Reply has been handed to the Court. Copy has been served. Counsel for the petitioner is insisting for hearing of the petition. Learned counsel for the respondent states that proper procedure has not been followed although he has admitted that before filing of the petition despite of receiving the invocation notice, the Arbitrator was not nominated by the respondent.

As far as his second submission is concerned, it is settled law that there would be a failure of procedure necessitating recourse to Section 11(6) of the Act when a party that is bound to take steps to appoint the arbitrator refuses to perform its obligation as such. The Supreme Court in **Datar Switchgears Ltd. v. Tata Finance Ltd. and Another**, (2000) 8 SCC 151, has enunciated the law in this regard in the following words:

"An application under sub-clause (6) of Section 11 can be filed when there is a failure of the procedure for appointment of Arbitrator. This failure of procedure can arise under different circumstances. It can be a case where a party who is

bound to appoint an Arbitrator refuses to appoint the Arbitrator or where two appointed Arbitrators fail to appoint the third Arbitrator. If the appointment of Arbitrator or any function connected with such appointment is entrusted to any person or institution and such person or institution fails to discharge such function, the aggrieved party can approach the Chief Justice for appointment of Arbitrator."

In view of the decision of **Datar Switchgears Ltd.** (supra), the respondent has lost its right as the notice of invocation of arbitration was issued by the petitioner on 30th March, 2016. Despite of notice, till the date of filing of the petition, the Arbitrator is not appointed. Under these circumstances, this Court is left with no option but to appoint the sole Arbitrator to adjudicate the disputes between the parties

As regards the objection of the respondent that the proper procedure has not been followed, learned counsel for the petitioner states that there were various meetings with the respondent, however, the respondent was not ready to pay the due amount. Therefore, the procedure has been followed. Even otherwise in view of the two recent judgments rendered by co-ordinate Bench in the case of **M/s. Satpal Sharma & Sons vs. Union of India & Anr.**, being Arb. P. No.65/2015, dated 28th July, 2015 and **Ravindra Kumar Verma vs. M/s. BPTP Ltd. & Anr.**, C.M. (M) No.1021/2014, dated 18th November, 2014, the said objection obviously has no force.

Accordingly, Ms.Bimla Makin, Retd. District & Sessions Judge, (Mobile No.9910384624) is appointed as sole Arbitrator to adjudicate the disputes arising between the parties as mentioned in the present petition. The parties are also allowed to file their respective claims and counter-claims before the Arbitrator. Liberty is granted to the respondent to raise all the grounds as mentioned in the reply to the petition.

The arbitration shall take place under the aegis of Delhi International Arbitration Centre ('DAC'). The Arbitrator shall ensure the compliance of the provisions of Arbitration and Conciliation (Amendment) Act, 2015 before commencing the arbitration. The fees of the learned Arbitrator shall be in terms of the schedule of the amended Act. The parties to appear before the Arbitrator on 15th July, 2016 at 4.00 p.m. for directions.

The petition is accordingly disposed of.

Copy of this order be given *dasti* to the learned counsel for the parties and a copy thereof be delivered to the learned Arbitrator as well as Additional Coordinator, DAC forthwith.

MANMOHAN SINGH, J.

MAY 31, 2016/jk