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IN THE HIGH COURT OF DELHI AT NEW DELHI

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ARB.P. 277/2016

KORE SECURITY SERVICES

..... Petitioner

Through: Mr. Vinay Kumar Bhasin with
Mr. Sanjay Padam Jain, Advocates.

versus

DELHI TOURISM & TRANSPORTATION

..... Respondent

Through: Mr. Abhimanyu Garg with Ms. Preety
Makkar, Advocates.

CORAM: JUSTICE S.MURALIDHAR

ORDER

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20.10.2016

1. This is a petition under Section 11 (5) of the Arbitration and Conciliation Act, 1996 ('Act') filed by the Petitioner seeking the appointment of an Arbitrator to adjudicate the disputes between the parties which has arisen from the contract dated 2nd February, 2015 whereby the Petitioner was to provide security services in various units to the Respondent for a period of two years.
2. The dispute arose between the parties as a result of the show-cause notice being issued to the Petitioner on 26th March, 2016. By its letter dated 22nd April, 2016 the Respondent informed the Petitioner that the contract stood terminated.

3. The Petitioner filed a petition under Section 9 of the Act in the court of the learned Additional District Judge and on 27th April, 2016 an order was passed restraining the Respondent from invoking the bank guarantee furnished by the Petitioner. A direction was given to the Petitioner to initiate arbitration proceedings. Pursuant to the aforementioned order, on 28th April, 2016, the Petitioner wrote a letter to the Respondent invoking the arbitration clause and called it upon to suggest the name of sole arbitrator to act as “the mutually acceptable sole Arbitrator to adjudicate and render the award in respect of the aforementioned disputes with immediate effect after receipt of this letter.”

4. At this stage it is necessary to set out in full the relevant arbitration clause which reads as under:

“58. Dispute Resolution

(a) Any dispute and/or difference arising out of or relating to this contract will be resolved through joint discussion of the authorized representatives of the concerned parties. However, if the disputes are not resolved by joint discussions, then the matter will be referred for adjudication to a sole Arbitrator appointed by the Managing Director & CEO of Delhi Tourism & Transportation Corporation Ltd.

(b) The award of the sole Arbitrator shall be final and binding on all the parties. The arbitration proceedings shall be governed by Indian Arbitration and Conciliation Act 1996 as amended from time to time.

(c) The cost of Arbitration shall be borne by the respective parties in equal proportions. During the pendency of the arbitration proceeding and currency of contract, neither party shall be entitled to suspend the work/service to which the dispute relates on account of the arbitration and payment to the contractor shall continue to be made in terms of the contract. Arbitration proceedings will be held at Delhi/New Delhi

only.”

5. By its letter dated 6th May, 2016, the Respondent appointed Mrs. Janak Juneja, retired IAS to act as an Arbitrator. On the same date, the Arbitrator issued notices to the parties fixing the date for hearing as 19th May, 2016.

6. On 17th May 2016 the Petitioner sought an adjournment in the proceeding before the learned Arbitrator. The date was then fixed for 20th June 2016. Again a letter was addressed to her stating that learned counsel for the Petitioner was in some difficulty and six weeks’ time was sought.

7. On 4th July, 2016, the next date of the proceeding, the said Arbitrator made a disclosure under the Fifth Schedule of the Act in which *inter alia* she mentioned that she had been conducting arbitration cases for the Respondent.

8. Subsequently, on 14th September, 2016 the said Arbitrator informed the parties that on 5th September, 2016 an application had been filed by the Petitioner challenging the Arbitrator. In view of the averments made in the application, she withdrew from the case.

9. Learned counsel for the Respondent has today produced before the Court a letter issued on 7th October, 2016 by the Respondent replacing Mrs. Janak Juneja with Mr. Ramesh Narayanaswami, retired IAS Officer as a sole Arbitrator. It appears that he has also issued notice dated 18th October, 2016 and fixed the matter for 3rd November, 2016.

10. Learned counsel for the Petitioner reiterated his plea that the Court

should appoint an independent arbitrator to replace the arbitrator appointed by the Respondent.

11. In terms of the arbitration clause, the Managing Director of the Respondent has a right to appoint an Arbitrator. There is nothing shown to the Court that the Arbitrator now appointed by the Respondent is not an independent Arbitrator. In any event, it is incumbent on the Arbitrator now appointed to abide by Section 12 of the Act and make necessary disclosure in terms of the Fifth Schedule of the Act. It will be open to the Petitioner to seek appropriate remedies if the Petitioner decides to challenge the Arbitrator. As of now, there is no case made out by the Petitioner for terminating the mandate of the said Arbitrator or appointing another Arbitrator to replace the said Arbitrator.

12. The prayer made in the petition is declined for the aforementioned reasons. The petition is, accordingly, dismissed.

S.MURALIDHAR, J

OCTOBER 20, 2016

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