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

+ O.M.P.(T) 21/2015

R K BARARIA Petitioner
Through Mr.Sanjay Bansal, Adv.

versus

NUCLEAR SCIENCE CENTRE Respondent
Through Mr.Aditya Ranjan, Adv.

CORAM:

HON'BLE MR. JUSTICE MANMOHAN SINGH

ORDER

% **17.03.2016**

The present petition has been filed by the petitioner under Section 14 and 15 of Arbitration and Conciliation Act, 1996 for termination of the mandate of the Arbitrator and substitution of new Arbitrator in place of earlier arbitrator. Reply to this petition has been filed. The respondent along with reply has filed annexure R-1 which is order dated 19th January, 2004 of the Arbitrator. The contents of the said order read as under:-

“Whereas dispute had arisen between the parties in respect of the construction of Phase-II housing in Nuclear Science Centre, vide agreement dated 04.04.1996 (Ref. NO.NSC/NIT No.6/96 dated 12.02.1996).

M/s R.K. Bararia, the claimant first approach the Hon’ble High Court for appointment of an sole Arbitrator. The arbitrator clause in the agreement however provides that the Sole Arbitrator would be appointed by the respondent, Nuclear Science Centre. The Hon’ble Court disposed off the petition with the liberty to NSC to appoint its Sole Arbitrator.

Thereupon, NCS appointed myself, (Justice H.C. Mittal) on 22.11.2002, The claimant, M/s R.K. Bararia, thereupon filed another petition in the Hon'ble High Court of Delhi under Section 11(5) of the Arbitration Act that the Arbitrator was not appointed within the prescribed tie of 30 days and therefore, the appointment was bad in law. The Hon'ble Court was requested to appoint an Arbitrator. That petition was disposed off on 30.01.2003 holding that the Arbitrator been validly appointed. However, the claimant challenged the order dated 31.01.2003 in Writ Petition No.2589 and 4355 of 2003 in the Hon'ble High Court. Those writs were dismissed by the Division Bench of Hon'ble High Court on 5th May, 2003.

First date for hearing was fixed for 14.04.2003. The claimant remained absent in spite of due services by refusal. The respondent was duly represented. Subsequently, the claimant challenged the order dated 30.01.2003 regarding appointment of Arbitrator as stated above Second date of hearing was fixed on 02.07.2003. On that date also, the claimant remained absent. He was duly served through a letter under a Registered cover which he refused to accept.

It was however, decided to give another opportunity and fresh notice fixing the date as 12.09.2003 was sent to the claimant. However, the claimant remained absent on that day as well. He again refused to accept the notice.

On behalf of Nuclear Science Centre, the respondents, it has been argued by the learned Counsel that from the continuous absence of the claimant, it is clear that claimant are not interested in pressing his claim against the Nuclear Science Centre and therefore the Arbitration proceedings should be terminated under Section 32 of the Arbitration and Conciliation Act, 1996, which reads as follows.

32. Termination of proceedings.—

(1) The arbitral proceedings shall be terminated by the final arbitral award or by an order of the arbitral tribunal under sub-

section (2).

(2) The arbitral tribunal shall issue an order for the termination of the arbitral proceedings where—

(a) the claimant withdraws his claim, unless the respondent objects to the order and the arbitral tribunal recognises a legitimate interest on his part in obtaining a final settlement of the dispute,

(b) the parties agree on the termination of the proceedings, or

(c) the arbitral tribunal finds that the continuation of the proceedings has for any other reason become unnecessary or impossible.

It was therefore submitted that the present case fell squarely within the sub-section 32(2C), as the continuation of the Arbitration Proceedings have become unnecessary since the claimant did not want to pursue his claim. Under the circumstance it is impossible for the Arbitration Tribunal to proceed further and hence the Arbitration proceedings should be terminated.

The law is very clear that if the party to the Arbitration proceedings in spite of notices does not appear. It would be abundantly clear that he had no intention to appear before the Arbitrator and therefore the arbitration proceedings cannot proceed in the absence of the claimant.

In the present case, therefore, in the absence of any evidence on behalf of the claimant in support of his claims it has become impossible to proceed with the arbitration proceedings hence the same are liable to be terminated.

The Arbitration proceedings are hereby terminated. The NSC (Respondent) would get Rs.26000/-(Twenty Six Thousand costs regarding fees Rs.20000/- to the Arbitrator and Rs.6000/- to the counsel.”

The said order has not been filed along with the petition. There is no merit in the petition. Had the above referred order brought to the knowledge of the Court, notice could not have been issued. The entire petition is misconceived. The petitioner is guilty of suppression of material fact. The petition is accordingly dismissed with cost of Rs.20,000/- which shall be paid by the petitioner to the respondent within two weeks from today. At this stage, learned counsel for the petitioner wishes to withdraw the main petition. His request is opposed by the learned counsel for the respondent. Their request cannot be considered.

MANMOHAN SINGH, J.

MARCH 17, 2016/vp