

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

% **Order delivered on: 22<sup>nd</sup> July, 2016**

+ **Arb. P. No.8/2016**

LION SERVICES LTD. .... Petitioner  
Through Ms.Seema Tiwari, Adv.

versus

AMBIENCE FACILITY MANAGEMENT PVT. LTD. .... Respondent  
Through Mr.Sumit Gahlawat, Adv.

**CORAM:  
HON'BLE MR.JUSTICE MANMOHAN SINGH**

**MANMOHAN SINGH, J. (ORAL)**

1. The present petition has been filed by the petitioner under Section 11(5) of the Arbitration and Conciliation Act, 1996 for appointment of a sole Arbitrator to adjudicate the disputes between the parties.
2. Brief facts of the case as per the pleadings are that –
  - (i) The respondent had issued a Letter of Intent (LOI) dated 1<sup>st</sup> April, 2012 to the petitioner for hiring of professional services for House Keeping and allied services for its premises at Ambience Mall, Nelson Mandela Road, Vasant Kunj, New Delhi which was renewed vide LOI dated 8<sup>th</sup> March, 2013 and the petitioner had thus provided the services to the above said premises of the respondent from 9<sup>th</sup> March, 2012 till October, 2014 as per the details agreed between the parties with the specific covenant that the payment shall be made by the respondent by account payee cheque favouring the petitioner within 30 days after the

receipt of the invoices for the services provided. It was also agreed that the charges under LOI were subject to review and depending on inflation and other indices to be negotiated at the time of renewal of the contract and would be subject to variations in accordance with Minimum Wages Act.

- (ii) While agreeing for the said terms and conditions regarding the payments of wages etc., it was also agreed between the parties that the respondent would be under an obligation to release the payment for the services provided within 30 days of the receipt of invoice.
- (iii) Pursuant to the said LOI, the petitioner rendered best of its services with effective and efficient men power deployment at the site of the respondent since 9<sup>th</sup> March, 2012 till October, 2014 but the respondent had failed to pay the amount of the following invoices:-

| S. No. | Ref.No.          | Invoice Date | Invoice Amount | TDS (In Rs.) | Pending amount (In Rs.) |
|--------|------------------|--------------|----------------|--------------|-------------------------|
| 1.     | LSL-14-15/09/035 | 01.09.14     | 16,43,919/-    | 29,388/-     | 16,14,531/-             |
| 2.     | LSL-14-15/10/028 | 01.10.14     | 16,06,004/-    | 24,828/-     | 15,81,176/-             |
| 3.     | LSL-14-15/11/022 | 01.11.14     | 15,09,585/-    | ----         | 15,09,585/-             |
|        | Total            |              | 47,59,508/-    | 54,216/-     | 47,05,292/-             |

3. The contention of the petitioner is that despite of rendering good services, the respondent did not make the payment in time and there is an outstanding amount to be recovered from the respondent. In view of the said situation, even the petitioner was compelled to withdraw its services with effect from December, 2014. Despite of issuance of various communications in writing and otherwise by the petitioner requesting the respondent to release the outstanding amount, the respondent failed to adhere to the request of the

petitioner. As per the final audited accounts of the petitioner for the year 2014-15, an amount of Rs.47,05,292/- is due and payable by the respondent to the petitioner which is withheld by the respondent who is also liable to pay interest @ 24% per annum on the said amount. The legal notice dated 19<sup>th</sup> August, 2015 was also served upon the respondent, in response to which the reply dated 4<sup>th</sup> September, 2015 was received. Under the LOI, the parties had agreed to resolve the disputes of all kinds through the Arbitrator, however, the parties had not reached the consensus to appoint the Arbitrator. But the respondent after receiving a letter dated 8<sup>th</sup> October, 2015 from the petitioner had unilaterally appointed Mr.Achal Kumar Kataria, E-15, 1<sup>st</sup> Floor, South Extension-I, New Delhi-110049, as Arbitrator without the consultation with the petitioner and with malafide intention.

4. It is stated by the petitioner that the said appointment is not acceptable to the petitioner, therefore, some neutral person be appointed to resolve the disputes between the parties.

5. When the matter was taken up today, the learned counsel for the respondent was asked that as the respondent has unilaterally appointed Mr.Achal Kumar Kataria as Arbitrator, he should file his affidavit that he has no conflict of interest in the matter as provided under Section 12 of the amended Act. He did not give any positive response, rather submits that let the matter be decided on merits. He even did not agree to file such affidavit either of the respondent or of Mr.Achal Kumar Kataria.

6. Under these circumstances, in order to maintain the independence and impartiality, the mandate of the Arbitrator Mr.Achal Kumar Kataria appointed by the respondent is terminated, as the apprehension raised by the petitioner is justifiable. Justice J.M. Malik

(Retired Judge of this Court) (Mobile No.9560084747) is appointed as sole Arbitrator to adjudicate the disputes between the parties. The parties are also allowed to file their respective claims and counter-claims before the Arbitrator.

7. The Arbitrator shall file the affidavit of "no conflict of interest". 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 19<sup>th</sup> August, 2016 for directions.

8. The petition is accordingly disposed of.

9. Copies of this order be given *dasti* to the learned counsel for the parties and a copy thereof be delivered to the learned Arbitrator forthwith.

**(MANMOHAN SINGH)**  
**JUDGE**

**JULY 22, 2016**