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

+ **O.M.P. (T) (COMM) 17/2017**

NATIONAL AGRICULTURAL
COOPERATIVE FEDERATION OF INDIA
(NAFED)

..... Petitioner

Through: Mr Aaditya Vijay Kumar, Advocate
with Ms Rupam, Advocate.

versus

MR LALIT MOHAN

..... Respondent

Through: Ms Radhika Chauhan, Advocate &
Mr Rattan Lal Goel, Advocates.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER

% **10.04.2017**

1. The petitioner has filed the present petition under Section 14 and 15 of the Arbitration and Conciliation Act, 1996 (hereafter 'the Act'), *inter alia*, praying that an arbitrator be appointed in place of Justice Jaspal Singh (Retired) who was appointed as the sole arbitrator to adjudicate the disputes between the parties by an order dated 22.08.2006 passed by this Court in AA No. 264/2006. Notice on this petition was issued on 01.03.2017 and the matter was listed on 27.03.2017 and thereafter on 28.03.2017 and on 31.03.2017. Although, it is stated by the learned counsel for the respondent that a reply has been filed, however, the same is not on record.

2. The learned counsel for the respondent contended that the petitioner had failed to pay the arbitrator's fee and, therefore, the proceedings ought to be considered as terminated. He relied on certain procedural orders passed by the Arbitral Tribunal directing deposit of fees and submitted that the

petitioner, having failed to comply with the said directions, had frustrated the proceedings. Consequently, the proceedings must be treated as terminated.

3. He relied on the decision of a Coordinate Bench of this Court in **M/s. Chemical Sales Corporation and Ors. v. M/s A & A Laxmi Sales and Service Private Ltd. & Ors.**: 2011 LawSuit (Del)2868 in support of this contentions.

4. The contention that since the petitioner has failed to pay the arbitrator's fees as directed, an arbitrator in place of Justice Jaspal Singh cannot be appointed, is without merit. It is seen that the sole arbitrator had not terminated the arbitral proceedings but, in the minutes of the proceedings held on 16.02.2016, expressed his inability to continue as an arbitrator. He had further observed that "*any of the parties may get another arbitrator appointed*".

5. The reliance placed by the respondent to the decision of a Coordinate Bench of this Court in **M/s. Chemical Sales Corporation** (*supra*) is wholly misconceived. In that case, the arbitral tribunal had terminated the proceedings under Section 32(2)(c) of the Act and, therefore, this Court rejected the plea for appointment of a substitute arbitrator. Clearly, once the arbitral proceedings are terminated, the question of appointing another arbitrator would not arise.

6. In the circumstances, Justice Nisar Ahmad Kakru, (Retired) (Mobile No.07382603046 & 9419000938) is appointed as the sole arbitrator to adjudicate the disputes between the parties. The arbitrator shall continue the

proceedings from the same stage as obtaining before Justice Jaspal Singh (Retired). This is subject to the Arbitrator making the necessary disclosure under Section 12 of the Act and not being ineligible under Section 12(5) of the Act.

7. The parties shall co-ordinate to ensure that the relevant records are collected from Justice Jaspal Singh (retd.) and filed with the arbitrator.

8. It is clarified that it will be open for the arbitrator to consider the consequences of non-payment of fees to Justice Jaspal Singh (retd.) and pass appropriate orders.

9. The petition is disposed of.

VIBHU BAKHRU, J

APRIL 10, 2017
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