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

+ O.M.P.(T) 7/2016

DHOOT DEVELOPERS PVT. LTD. (JV)M/S BENGAL
SILVER SPRING PROJECT LTD.

..... Petitioner

Through: Mr S. K. Maniktala and Mr Vinod
Kumar, Advocates.

versus

THE UNION OF INDIA

..... Respondent

Through: Mr Jaswinder Singh, Advocate.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER

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28.02.2017

1. The petitioner has filed the present petition under Section 15(2) of the Arbitration and Conciliation Act, 1996(hereafter 'the Act'), *inter alia*, praying that an arbitrator be appointed to fill the vacancy caused by resignation of the Sole Arbitrator (Brig. Arun Mehta) appointed by the respondent.
2. The petitioner was awarded a contract for construction of dwelling units for Army personnel at Amritsar and Tibri, Punjab. The said contract was cancelled by the respondent on 01.03.2013 with effect from 04.03.2013. The petitioner claims the said cancellation to be illegal, wrongful and arbitrary.
3. In view of the disputes that had arisen between the parties, the petitioner invoked the arbitration clause by its letter dated 28.02.2013. Initially, the respondent stated that the arbitration clause could not be

referred to, however, subsequently, the respondent referred the disputes to arbitration and appointed Brig. Arun Mehta - a serving officer of the respondent - as a sole arbitrator. The sole arbitrator superannuated from service on 29.02.2016 and, accordingly, tendered his resignation as the sole arbitrator on the said date. Since the respondent did not appoint an arbitrator in place of Brig. Arun Mehta, the petitioner filed the present petition on 25.04.2016.

4. The present petition was taken up for hearing on 28.04.2016 and on the said date, the learned counsel for the respondent sought three weeks time to file a reply. In the meantime, the respondent also appointed an arbitrator on 27.05.2016.

5. Mr Jaswinder Singh, the learned counsel appearing for the respondent submitted that there was no a delay on the part of the respondent in appointing the arbitrator in place of Brig. Mehta since the letter of resignation dated 29.02.2016 was received by the concerned officer only around 21.04.2016 and another arbitrator was appointed on 27.05.2016. The said contention was stoutly disputed by the Mr Maniktala, learned counsel for the petitioner, who submitted that the copy of the letter dated 29.02.2016 produced by the respondent itself indicates that the said letter had been received much earlier. He further submitted that, in any event, since the respondent had not appointed an arbitrator prior to the petitioner filing the present petition the respondent had forfeited its right to appoint an arbitrator and an independent arbitrator ought be appointed by this court to adjudicate the disputes between the parties.

6. I have heard the learned counsel for the parties.

7. The essential facts necessary to address the controversy are not disputed. Admittedly, the Arbitrator (Brig. Arun Mehta) had resigned on 29.02.2016 as he had superannuated from the service on that date. Although, there is some controversy as to whether the letter of resignation was received by the respondent without any delay, it is clear that the same was received by the respondent in March itself as one of the noting on the letter indicates the date of 17.03.2016. However, even according to the respondent, the said letter was with the concerned department on 21.04.2016. Admittedly, the respondent did not appoint an arbitrator even during the period of one month after the receipt of the resignation letter by the concerned department.

8. In terms of Section 15(2) of the Act, a substitute arbitrator is to be appointed in accordance with the Rules as applicable for appointment of the arbitrator who is being replaced. The Supreme Court in **Datar Switchgear Ltd v. Tata Finance Ltd**: (2000) 8 SCC 151 had also held that the period of 30 days was not mentioned in Section 11(6) of the Act and the appointing authority could appoint the arbitrator even after the period of 30 days but if it failed to appoint an arbitrator prior to a party moving the Court under Section 11 of the Act, the respondent would forfeit its right to do so. In the present case, admittedly, the arbitrator was not appointed either within 30 days of the receipt of the resignation by the erstwhile arbitrator or prior to the petitioner moving this court. In this view, the respondent had clearly forfeited its right to appoint an Arbitrator.

9. Accordingly, Ms Justice Rekha Sharma (Retired) (Mobile No. 9871300025) is appointed as an arbitrator to adjudicate the disputes between

the parties. The arbitration shall be conducted under the aegis of Delhi International Arbitration Centre (DIAC) and in accordance with its Rules. 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. The parties are at liberty to approach the arbitrator for making the necessary disclosure. The arbitration shall be conducted from the same stage as left by the earlier arbitrator.

10. The petition is disposed of.

VIBHU BAKHRU, J

FEBRUARY 28, 2017
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