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

+ O.M.P. (T) (COMM.) 24/2017 and IA No. 3656/2017

G S DEVELOPERS & CONTRACTORS PVT
LTD

..... Petitioner

Through: Mr Mohit Chaudhary and Mr Kunal
Sachdeva, Advocates.

versus

ALPHA CORP DEVELOPMENT PVT LTD
& ORS.

..... Respondents

Through: Mr Raj Shekhar Rao, Mr D. Panda
and Ms Amrita Panda, Advocates
alongwith Mr Praveen Kumar, AR of
the respondent.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER
22.03.2017

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1. The petitioner has filed the present petition under Section 14 read with Section 29A of the Arbitration and Conciliation Act, 1996 (hereafter 'the Act'), *inter alia*, praying that alleged termination of the arbitrator by the respondent be declared as illegal and *non est*.

2. In view of the disputes between the parties, the petitioner had invoked the arbitration on 23.11.2015. Pursuant to the aforesaid invocation, the appointing authority of the respondent had appointed Justice R.S. Sodhi (Retired), a former Judge of this Court as the sole arbitrator to adjudicate the disputes between the parties. The arbitrator entered upon reference on 30.12.2015. The arbitral proceedings were not concluded within a period of one year and, therefore, the respondent by its letter dated 06.03.2017

unilaterally declared the mandate of the arbitrator as terminated and thereafter proceeded to appoint Justice J.K. Mehra (Retired) as a sole arbitrator to adjudicate the disputes between the parties.

3. It is the petitioner's case that the parties had agreed - both expressly as well as by their conduct - that the period for making the award be extended and, therefore, the action of the respondent in declaring that the mandate of the arbitrator has terminated is illegal and *non est*. It is also the case of the petitioner that a party does not have the power to terminate the mandate of the arbitrator under Section 29A of the Act and must necessarily approach this Court under Section 14 of the Act; and, in such proceedings, it would be open for the Court to extend the period for making the award in terms of Section 29A(4) of the Act.

4. Mr Rao, learned counsel appearing for the respondent states that, without going into the question whether the respondent had agreed for enlarging the time for making the award, the respondent is ready and willing that an arbitrator be appointed by this Court to adjudicate the disputes between the parties. He only requests that the arbitral tribunal commence the proceedings from the same stage as currently before Justice Sodhi (Retired).

5. Mr Chaudhary, learned counsel appearing for the petitioner concurs with the aforesaid suggestion and joins Mr Rao in requesting that an independent arbitrator be appointed.

6. Accordingly, with the consent of the parties, Justice Vikramajit Sen (Retired) (Mob. No. +91 8447333366) a former Judge of the Supreme Court of India is appointed as the sole arbitrator to adjudicate the disputes between

the parties. 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 arbitrator shall proceed from the same stage as obtaining before Justice Sodhi (Retired) and shall endeavour to complete the proceedings within a period of one year from entering upon reference.

7. The parties shall approach Justice Sodhi (Retired) for the records and ensure that the same are filed before the arbitrator appointed.

8. The petition and pending application are disposed of.

9. *Dasti.*

MARCH 22, 2017
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VIBHU BAKHRU, J