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

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Date of Decision: 01.05.2017

+ ARB.P. 254/2017

SARVESH SECURITY SERVICES PVT. LTD. Petitioner
Through Ms.Sneha Singh, Adv.

versus

DIRECTOR (MEDICAL) DELHI & ANR. Respondents
Through Ms. Sonam Anand, Adv. for
Mr.Yakesh Anand, Adv. for ESIC for R-1.
Mr.Praveen Kumar Jain, Adv. for R-2.

CORAM:
HON'BLE MR. JUSTICE JAYANT NATH

JAYANT NATH, J. (Oral)

1. The present petition is filed under Section 11 of the Arbitration and Conciliation Act, 1996 for appointment of an arbitrator.
2. Some of the basic facts are that respondent No.1 floated a bid for deployment of 259 security guards and 8 ex-servicemen ASO at the premises of the respondent. On 01.10.2011, the petitioner being a successful bidder was awarded a contract for a period of two years. The petitioner is said to have deployed its security guards w.e.f. 01.10.2.011. Extension of contract was also made. The contract finally expired on 31.03.2014. It is the submission of the petitioner that though it has paid the entire salaries and dues of the guards that were deployed, the respondents have failed to make the full and final payment of the bills of the petitioner and have also failed to

release the security deposit of Rs. 40 lakhs.

3. I have heard learned counsel for the parties.

4. Learned counsel for respondent No.1 relies upon the Arbitration Clause between the parties to submit that prior to reference of disputes to an arbitrator, the arbitration clause provides that the disputes shall be resolved through joint discussion of the authorised representatives of the concerned parties. She submits that in the present case no such plea has been raised by the petitioner and that there was no discussion of the authorised representatives of the concerned parties.

5. Learned counsel for the petitioner submits that the matter has been pending for two years despite several communications addressed to the respondents. The respondents have failed to appoint an arbitrator and in that event, they lost their right to appoint the arbitrator.

6. The arbitration clause reads as follows:

“44. Dispute Resolution

(a) Any dispute and or difference arising out of or relating to this contract will be resolved through joint discussion of the authorized representatives of the concerned parties. However, if the disputes are not resolved by joint discussions, then the matter will be referred for adjudication to a sole Arbitrator appointed by the Director General, ESI Corporation, Headquarters Office, Panchdeep Bhawan, CIG Road, New Delhi.

(b) The award of the sole Arbitrator shall be final and binding on all the parties. The arbitration proceeding's shall be governed by Indian Arbitration and Conciliation Act 1996 as amended from time to time.

(c) The cost of Arbitration shall be borne by the respective parties in equal proportions. During the pendency of the

arbitration proceedings and currency of contract, the Contractor shall not be entitled to suspend the work/service to which the dispute relates on account of the arbitration and payment to the contractor shall continue to be made in terms of the contract. Arbitration proceedings will be held at Delhi/New Delhi only.”

7. It may also be noted that the petitioner has also placed on record various communications including communications dated 17.04.2014 and 19.06.2014, etc. claiming release of various pending dues. Subsequently, various communications were also addressed to the respondents requesting for appointment of an arbitrator. In this context reference may be had to communication dated 21.04.2016 where a specific plea to appoint an arbitrator as per Clause 44 of the agreement was made. To the same effect are the communications dated 01.06.2016 and 29.07.2016.

8. It is clear that despite several communications, the respondents took no steps to readdress the grievance of the petitioner. The respondents, if interested in settling the matter through joint discussion, could have called the petitioner for joint discussion but failed to do the needful. Similarly, when the petitioner sought to invoke the arbitration clause and sought appointment of an arbitrator, again no steps were taken by the respondents.

9. The Supreme Court in the case of ***Deep Trading Company vs. Indian Oil Corporation & Ors., (2013) 4 SCC 35*** held as follows:-

“20. If we apply the legal position expounded by this Court in *Datar Switchgears Ltd. v. Tata Finance Ltd. and Anr.* MANU/SC/0651/2000: (2000) 8 SCC 151 to the admitted facts, it will be seen that the Corporation has forfeited its right to appoint the arbitrator. It is so for the reason that on 09.08.2004, the dealer called upon the Corporation to appoint the arbitrator in accordance with terms of Clause 29 of the agreement but that

was not done till the dealer had made application under Section 11(6) to the Chief Justice of the Allahabad High Court for appointment of the arbitrator. The appointment was made by the Corporation only during the pendency of the proceedings under Section 11(6). Such appointment by the Corporation after forfeiture of its right is of no consequence and has not disentitled the dealer to seek appointment of the arbitrator by the Chief Justice under Section 11(6). We answer the above questions accordingly.”

10. In the present case, in view of the long delay in not appointing an arbitrator, the respondents have now forfeited their right to appoint an arbitrator.

11. I appoint Justice R.C.Chopra (Retd.) (Mobile No.: 9818097777) to adjudicate the disputes between the parties. The learned Arbitrator may fix his fee and schedule of the arbitration in consultation with the parties. The appointment is subject to compliance by the learned Arbitrator of Section 12(1) of the Act.

12. In view of the above the petition stands disposed of.

13. Dasti.

JAYANT NATH, J

MAY 01, 2017

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