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IN THE HIGH COURT OF DELHI AT NEW DELHI

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O.M.P. (COMM) 586/2016

VINOD KUMAR DAHIYA

..... Petitioner

Through Mr. Vijay Sharma with Mr. Rahul Gupta,
Advocates.

versus

NEPTUNE SHIPMANAGEMENT SERVICES (PTE)

LTD

..... Respondent

Through: Mr. Rishi Agrawala, Advocate.

CORAM: JUSTICE S.MURALIDHAR

ORDER

02.01.2017

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1. This is a petition under Section 34 of the Arbitration and Conciliation Act, 1996 ('Act') challenging the impugned Award dated 30th September, 2007 passed by the learned Arbitrator appointed as per the Agreement entered into between the parties on 13th September, 1999.

2. The facts are that on 13th November, 1999, the Petitioner, Vinod Kumar Dahiya, suffered burn injuries to the extent of 39% of his body during the course of his employment with the Respondent, Neptune Ship Management Services (PTE) Limited while on a vessel on the high seas en route to Louisiana, USA. Although by a judgment dated 28th December 2004 of the District Court of Louisiana, the Petitioner was awarded compensation to the tune of US\$ 579,988, the Appellate Court reversed the said order and remanded the matter to the District Court with a direction to stay the matter

in its entirety pending arbitration proceedings in India since the agreement in question contained an arbitration clause.

3. A sole Arbitrator was appointed by the Respondent. The Arbitrator required the Petitioner through counsel to file a statement of claim within 30 days from the date of receipt of *email* dated 17th July, 2007. The Petitioner filed a statement of claim by *email* dated 15th August, 2007 claiming damages to the tune of US\$ 1,200,000. He also challenged the appointment of the arbitrator and his jurisdiction. A reply was filed to the statement of claim by the Respondent by its *email* dated 26th September, 2007.

4. Strangely, the learned sole Arbitrator has, without giving the opportunity to the parties to substantiate their respective claims, disposed of the claim of the Petitioner on 30th September, 2007 by the impugned 'award' by *email* merely because, according to the sole Arbitrator, "the claimants have failed to make the proper claim".

5. The least the learned Arbitrator was required to do was to give proper notice and opportunity to the Petitioner to substantiate his claim. If indeed the statement of claim was incomplete, then the Petitioner should have been given an opportunity to rectify it. At that stage, even a rejoinder had not been filed by the Petitioner.

6. The impugned Award is clearly inconsistent with the fundamental policy of Indian law. Although the Code of Civil Procedure 1908 is not strictly applicable to arbitration proceedings, a procedure ought to have been devised by the learned Arbitrator to enable the parties to complete their

pleadings adduce evidence and advance oral arguments. Since none of the above steps having been taken, the Court is unable to sustain the impugned Award.

7. For the aforementioned reasons, the impugned Award 30th September, 2007 is hereby set aside.

8. Learned counsel for the parties agree that the Court may appoint a sole Arbitrator to adjudicate the disputes between the parties afresh.

9. Accordingly, the Court appoints Ms. Justice Sunita Gupta, a former Judge of this Court, (Mobile No. 9910384628) as sole Arbitrator to adjudicate the disputes between the parties including their claims and counter-claims. The arbitration shall take place under the aegis of the Delhi International Arbitration Centre ('DAC').

10. In the first instance, the Arbitrator will make a disclosure to the DAC in terms of Section 11 (8) read with Section 12 (1) of the Act and thereafter enter upon reference. DAC will provide to the parties copies of the said disclosure. In the event the disclosure is not made within a reasonable time or such disclosure discloses the inability of the proposed Arbitrator to act as such, it will be open to the parties to apply to this Court for directions.

11. Subject to compliance with the above direction, Ms. Justice Sunita Gupta will act as Arbitrator and enter upon reference. The fees of the learned Arbitrator will be in terms of the Delhi High Court Arbitration Centre (Arbitrators' Fees) Rules.

12. The petition is disposed of. A copy of this order be communicated to the learned Arbitrator as well as Additional Coordinator, DAC forthwith.

S.MURALIDHAR, J

JANUARY 02, 2017/Rm