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

+ **O.M.P.(MISC)(COMM) 40/2017**

*Date of decision: 27<sup>th</sup> October, 2017*

OMAXE INFRASTRUCTURE &  
CONSTRUCTION LTD.

..... Decree Holder

Through Ms. Tina Garg and M.K.  
Ghosh, Advs

versus

UNION OF INDIA & ORS.

..... Judgment Debtor

Through Mr. Anurag Ahluwalia, CGSC  
with Mr Sushil Kumar Pandey,  
GP along with Mr. Akhilesh  
Gupta, Director

**CORAM:**

**HON'BLE MR. JUSTICE NAVIN CHAWLA**

**NAVIN CHAWLA, J. (Oral)**

**IA No.12413-14/2017(exemptions)**

Allowed, subject to all just exceptions.

The applications are disposed of.

**O.M.P.(MISC.)(COMM.) 40/2017**

1. This is an application under section 29-A(6) of the Arbitration and Conciliation Act, 1996 (hereinafter referred to

as 'the Act') praying for appointment of an independent arbitrator for adjudicating the disputes arising between the parties out of Contract Agreement no. DG-MAP/PHASE-II-Nagrata/PKG/IA/2010/11 (hereinafter refer to as 'the Agreement') for construction of residential accommodation at Nagrata. It has been submitted by the learned counsel for the petitioner that Shri Sudesh Kumar Gupta has been appointed by the Engineer In-Chief as sole arbitrator to adjudicate the disputes between the parties. He had entered reference on 27<sup>th</sup> February, 2016. The pleadings were completed by the parties and the sole arbitrator vide letter dated 22<sup>nd</sup> February, 2017 fixed 6<sup>th</sup> March, 2017 as the date of hearing. However, on the said date, respondent failed to appear before the sole arbitrator as a result of which the proceedings were adjourned to 12<sup>th</sup> April, 2017. As the time period mentioned in Section 29-A(1) had expired on 12<sup>th</sup> April, 2017, the parties agreed to a further extension of six months for the completion of proceedings before the sole arbitrator. The parties have also filed their arguments in support of their contentions before the sole arbitrator, however, since 15<sup>th</sup> June, 2017 there was no communication from the sole arbitrator regarding further progress of the arbitration proceedings. The petitioner has therefore filed the present petition seeking extension of time for completion of the arbitration proceedings and for appointment of an independent arbitrator in place of Shri Sudesh Kumar Gupta.

2. The learned counsel for the respondent, appearing on advance notice, has brought to my notice communication dated 5<sup>th</sup> October, 2017 from the learned sole arbitrator tendering his resignation and expressing inability to continue as arbitrator. The learned counsel for the respondent further produced a letter dated 24<sup>th</sup> October, 2017 whereby the Engineer In-Chief has been requested to appoint a substitute arbitrator in place of Shri Sudesh Kumar Gupta.

3. In view of the above, the counsel for the respondent submits that the petition has become infructuous inasmuch as the prayer for appointment of an independent arbitrator is concerned. On the other hand, the counsel for the petitioner submits that the progress of the arbitration before Shri Sudesh Kumar Gupta would show that unless an independent arbitrator is appointed, the proceedings would not proceed in a fair manner.

4. I have considered the submissions made by the Counsels for the parties. Clause 60 of the Agreement provides that the disputes between the parties shall be referred to the sole arbitrator to be appointed by the Engineer In-Chief, Army Head Quarters, New Delhi or in his absence, the Official Officiating as Engineer In-Chief or Director General of Works, if specifically delegated in writing by Engineer In- Chief, Army Head Quarters, New Delhi. It is further provided that if the arbitrator so appointed resigns or vacates his office or is unable

or unwilling to act due to any reason whatsoever, the authority appointing him may appoint a new arbitrator to act in his place.

5. In view of the above clause, I see no reason to deny the power of appointment vested with the Engineer In-Chief. The apprehension of the petitioner can be guarded through recourse to section 12 of the Arbitration Act, if at all required. It would not be proper for me, at this stage, to presume that the new arbitrator so appointed would not act in an impartial manner or with promptness.

6. In view of the above, while extending the time period for making of an award for a further period of six months from today, I direct the Engineer In-Chief, Army Head Quarters, New Delhi to appoint the substitute arbitrator within a period of two weeks from today. The substitute arbitrator who shall now to be appointed shall proceed from the stage where the arbitration proceedings were before the earlier appointed arbitrator.

7. This petition is disposed of in the above terms.

Copy of this order be given *dasti* under signature of Court Master.

**NAVIN CHAWLA, J**

**OCTOBER 27, 2017**  
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