

\$~29

\*

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

+

O.M.P. (T) (COMM.) 98/2017

ECONOMIC TRANSPORT ORGANISATION

..... Petitioner

Through : Mr.Surjeet Kumar Mishra and  
Mr.Haider Ali, Advocates.

versus

SPLENDOR BUILDWELL PVT. LTD.

..... Respondent

Through : Ms.Namitha Mathews and Ms.Poorva  
Pant, Advocates.

**CORAM:**

**HON'BLE MR. JUSTICE YOGESH KHANNA**

**ORDER**

% **04.12.2017**

**IA No.14231/2017**

Exemption allowed, subject to all just exceptions.

The application stands disposed of.

**O.M.P. (T) (COMM.) 98/2017 & IA No.14230/2017**

This petition under Section 14 of the Arbitration and Conciliation Act, 1996 (hereinafter referred as 'the Act') is filed for termination of the mandate of the sole arbitrator Mr.Mohinder Singh and to appoint a new arbitrator with mutual consent of the parties to adjudicate upon the dispute between the parties.

The learned counsel for the petitioner says the petitioner booked an office space on the 9<sup>th</sup> Floor, of "Splendor Spectrum One", Gurgaon admeasuring about 3675 square feet at the base rate of ₹4,800/- per square feet vide an application dated 13.05.2012 and

entered into the MOU dated 14.04.2012. The petitioner paid amounts at different date viz., ₹1,76,40,000/- on 30.04.2012; ₹18,73,016/- on 16.08.2012; ₹25.00 Lac on 25.08.2014. Further payments were also made between 28.02.2015 to 30.06.2016. However the respondent intimated its intention to cancel the booking vide its letter dated 13.01.2015 and a dispute arose.

The petitioner lodged a complaint with the Economic Offences Wing of the Delhi Police on 11.07.2016. In November 2016 the respondent sent a notice for appointment of an arbitrator which was opposed, but respondent appointed Mr.Mohinder Singh, Advocate as an arbitrator. The petitioner being aggrieved with such appointment moved Arb. Pet. No.201/2017 on which though a notice was issued to the respondent, but subsequently on 15.05.2017 it was withdrawn by the petitioner.

Thereafter, on 12.07.2017 the petitioner moved an application under Section 13(2) of the Act for dissolution of the arbitral tribunal and requested for mandatory disclosure under Section 12 (1) (a) of the Act and also on 26.08.2017 moved an application before the learned arbitrator for adjourning the proceedings *sine die*. The arbitrator however continued with the proceedings. The petitioner being aggrieved filed the present petition asking for termination of the mandate of the arbitrator.

The learned counsel for the petitioner argues the learned arbitrator had entered into the reference on 19.11.2016 when notice

was issued by the Chairman-Director of respondent herein to appoint Mr.Mohinder Singh, Advocate as an arbitrator, though the stand of the learned counsel for the respondent, appearing on advance notice, is the learned arbitrator entered into the reference only on 03.12.2016 when he had received the letter dated 19.11.2016; accepted it and issued notices to both the parties to appear before him on 14.12.2016. The letter dated 03.12.2016 of the learned arbitrator is relevant and it notes:-

*“03<sup>rd</sup> December, 2016*

**NOTICE**

*To*

*M/s. Economic Transport Organization Ltd,  
1E/6 Swami Ramtirath Nagar,  
Jhandewalan Extension,  
New Delhi-1 10055.*

*Whereas, vide letter dated 19.11.2016, sent by Mr. Hridey Vikram, Chairman-cum-Director of Mis. Splendor Buildwell Pvt. Ltd. having its office at Splendor Forum, 5th Floor, 03"Jasola District Centre, New Delhi-110025, appointed the undersigned as a Sole Arbitrator to adjudicate upon the disputes and differences that have arisen between the Economic Transport Organization Ltd. and the Splendor Buildwell Pvt. Ltd. in respect of cancellation of allotment of the Unit Nos. 904 & 906, admeasuring 3675 Sq. ft. of super area at 9<sup>th</sup> Floor in Tower B, IT/ITS Project "Spectrum" of Splendor Buildwell Pvt. Ltd. at Sector-58, Gurgaon, Haryana.*

*And whereas **I accept** the appointment of Sole Arbitrator to adjudicate upon the*

*disputes and the differences mentioned above.*

*By means of this Notice I hereby issue this Notice to M/s. Splendor Buildwell Pvt. Ltd, Splendor Forum, 5<sup>th</sup> Floor, 03, Janakpuri District Centre, New Delhi-110025 and Economic Transport Organization Ltd, 1.Ej6, Swami Rarntirath Nagar, Jhandewalan Extension, New Delhi-110055 to appear before me on this 14<sup>th</sup> day of December, 2016 at. 4.00 p.m at C-42, Friends Colony (East), New Delhi-110065.*

*You are both requested to appear before the undersigned either through your Counsel/duly authorised representative at the time and the place mentioned above.*

*Given this Notice under my signatures on this 3<sup>rd</sup> day of December, 2016*

*(MOHINDER SINGH)  
Advocate / Sole Arbitrator*

*cc:-*

*Splendor Buildwell (P) Ltd,  
Splendor Forum,  
5th Floor,  
03, Jasola District Centre,  
New Delhi-110025."*

The aforesaid letter notes though the notice for appointment is dated 19.11.2016, but it nowhere admits it was received on the said date. The letter rather reveal upon receipt of the letter dated 19.11.2016 the learned arbitrator has accepted his appointment to adjudicate upon the disputes and had issued notices to both the parties. Hence, prima facie it appear the letter dated 19.11.2016 was

received by the learned arbitrator on 03.12.2016 and there is no document to the contrary filed by the petitioner herein.

The main ground taken by the learned counsel for the petitioner is one year has elapsed since the arbitral proceedings has begun and hence, per mandate of Section 29A of the Act, the arbitration stands automatically terminated. The learned counsel for the respondent however has now produced the copy of the award dated 29.11.2017 to say the petition has become infructuous. Though, the learned counsel for the petitioner submits the award is hurriedly passed and this Court must terminate the mandate of the arbitrator and appoint a new arbitrator, but since the award has already been passed on 29.11.2017, the objection whether the award is non-est due to automatic termination of proceedings per Section 29 A (supra) or on which date the arbitrator actually entered reference cannot be gone into in this petition, since are questions of facts.

The conduct of the petitioner herein also cannot be ignored since despite various opportunities given to him to appear before the arbitrator, the petitioner took many dates, moved applications asking the arbitrator to file disclosures and despite filing of such disclosure, yet again did not appear and never filed its claim. The petitioner was never regular before the learned arbitrator despite various opportunities given on one ground or the other. Hence observing the conduct of the petitioner being non-cooperative, the learned arbitrator ultimately passed an award dated 29.11.2017. The petitioner did not leave any stone unturned to stall or delay the arbitral proceedings.

This petition now has become infructuous and is dismissed. The pending application also is disposed of. The petitioner is at liberty to file objections against the award.

No order as to costs.

**YOGESH KHANNA, J**

**DECEMBER 04, 2017**  
*M*