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IN THE HIGH COURT OF DELHI AT NEW DELHI

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ARB.P. 95/2018

ARCEE TRADING CORPORATION

..... Petitioner

Through: Mr. Siddhartha Nanwal with Mr.
B.K. Gautam, Advs

versus

SPML INFRA LTD.

..... Respondent

Through: Mr. Debayan Ghosh, Adv

CORAM:

HON'BLE MR. JUSTICE RAJIV SHAKDHER

ORDER

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06.08.2018

1. Notice in the petition was issued on 06.02.2018, which was accepted on behalf of the respondent by Mr. Samrat Sengupta and Mr. Shayamvar Deb, Advs. The matter was, thus, adjourned to 08.05.2018.
2. On 08.05.2018, the captioned petition was simply renotified by this Court for today i.e., 06.08.2018.
3. Mr. Debayan Ghosh, who, appears for the respondent has brought to my notice the contents of Procedural Order no. 1 pertaining to the hearing held on 22.02.2018 passed by Mr. Brijesh Kumar Goel i.e., sole Arbitrator.
4. Paragraph 2 of the said Procedural Order no. 1 reads as follows:-

“2. The claimant filed its ‘ Statement of Claim ’ along with their letter dated 22.02.2018 to the AT, stating that they would go ahead with the present Arbitral proceedings, and would withdraw other proceedings against the respondent on the respective dates of hearings at Saket District Court and Delhi High Court. The copy of ‘Statement of Claim’ was also handed over to the counsel of the respondent, by the claimant”

5. In the pre-lunch session, I had put to Mr. Siddhartha Nanwal, who, appears for the petitioner/claimant as to whether the petitioner/claimant had acquiesced to the jurisdiction of the sole Arbitrator and whether what is stated in the said Procedural Order no.1 was factually correct.

6. At the request of the learned counsel for the petitioner, the matter was passed over.

7. Mr. Siddhartha Nanwal, in the post lunch session returned with instruction to the effect that the petitioner/claimant, after acquiescing to the jurisdiction of the learned Arbitrator, had sent an e-mail, on 08.02.2018, to the arbitrator communicating its intention to withdraw from the arbitral proceedings.

8. According to me, the procedure which the petitioner/claimant has adopted, is not mandated under the Arbitration and Conciliation Act, 1996.

9. This is especially so as the learned counsel for the petitioner/claimant says that the reason that the e-mail was sent to the

sole arbitrator on 08.05.2018 was, on account of the fact that, according to the petitioner, the sole arbitrator was biased.

10. On the other hand, counsel for the respondent says that since the arbitral tribunal has already been constituted and the petitioner/claimant has acquiesced to the jurisdiction of the sole arbitrator, the captioned petition filed under Section 11 of the Arbitration and Conciliation Act, 1996 would not survive.

11. I tend to agree with the counsel for the respondent. The arbitral tribunal having been constituted, its mandate will have to be terminated before the petitioner can embark on the journey of having a new arbitrator appointed.

12. Accordingly, this petition is disposed of.

13. The petitioner will, though, have liberty to take appropriate steps in accordance with law with regard to further steps it may want to take in respect of the arbitration proceedings in case it persists with the stand that the Arbitrator is biased.

RAJIV SHAKDHER, J

AUGUST 06, 2018

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