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

+ ARB.P. 332/2018

NAVEEN KUMAR

..... Petitioner

Through: Mr Rajat Aneja, Ms Nisha Sharma
and Mr Deepak, Advocates.

versus

CSIR-INSTITUTE OF GENOMICS &
INTEGRATIVE BIOLOGY

..... Respondent

Through: Mr Jayesh K. Unnikrishnan and Mr
Anand Chandra Shailani, Advocates.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER

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23.05.2018

1. The petitioner has filed the present petition under Section 11 of the Arbitration and Conciliation Act, 1996 (hereafter 'the Act'), *inter alia*, praying that an arbitrator be appointed to adjudicate the disputes that have arisen between the parties in relation to the contract for "*Canteen Services at CSIR Institute of Genomics and integrative Biology*". The petitioner had caused a notice dated 26.08.2017 to be served through its advocate to the respondent and had, thereafter, approached this Court (ARB.P.4/2018: Naveen Kumar v. CSIR-Institute of Genomics & Integrative Biology) for appointment of an arbitrator. In that matter, it was held that the legal notice served on behalf of the petitioner could not be construed as a notice invoking arbitration and, accordingly, the petition was disposed of by permitting the petitioner to take next step of invoking the arbitration clause.

It was further directed that in the event the parties are unable to concur on reference of the dispute to the Arbitral Tribunal, the petitioner would have liberty to approach this Court.

2. On 23.03.2018, the petitioner caused another notice to be issued for invoking the arbitration clause. The learned counsel for the respondent states that pursuant to the said notice, DGCSIR has taken steps for appointment of his nominee arbitrator. He has also handed over a copy of the letter dated 23.04.2018 to the aforesaid effect.

3. The agreement between the parties includes an arbitration clause, which is set out below:-

“ARBITRATION

1. In the event of any question dispute/difference arising under the agreement or in connection herewith (except as to matters the decision of which is specially provided under this agreement) the same shall be referred to the sole arbitration of Director General, CSIR.
2. The award of the arbitrator shall be final and binding on the parties. In the event of such arbitrator to whom the matter is originally referred to is unable to act for any reason whatsoever, the Director-General, CSIR shall appoint another person to act as arbitrator in place of the out-going arbitrator in accordance with the terms of this agreement. The arbitrator so appointed shall be entitled to proceed with the reference from the stage at which it was left by his predecessor or afresh as the case may be.
3. The Arbitrator may give interim award(s) and/or directions, as may be required.
4. Subject to the aforesaid provision, the arbitration and conciliation act, 1996 and the rules made hereunder and any modification thereof from time to time being

in force shall be deemed to apply to the arbitration proceedings under this clause.”

4. There is no dispute as to the existence of the arbitration clause or that the same had been validly invoked. In view of Section 12(5) of the Act introduced by the Arbitration and Conciliation (Amendment) Act, 2015, DGCSIR is no longer eligible to act as an arbitrator and also cannot nominate a person on his behalf to act as an arbitrator. (*See: TRF Ltd. v. Energo Engineering Projects Ltd: AIR 2017 SC 3889*).

5. In view of the above, this Court had granted liberty to the petitioner to approach this Court in case the parties are unable to concur on appointment of an arbitrator. The learned counsel appearing for the respondent states that the respondent has no objection if an independent arbitrator is appointed by this Court. With the consent of the parties, it is directed that an arbitrator be appointed by the Delhi International Arbitration Centre (DIAC). The arbitration shall be conducted under the aegis of DIAC and in accordance with its Rules.

6. The parties shall appear before the Coordinator, DIAC on 01.06.2018 at 11:00 AM.

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

VIBHU BAKHRU, J

MAY 23, 2018
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