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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Date of Decision: 29.11.2018

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ARB.P. 552/2018

ANCL & CO. (INDIA) PVT. LTD.

..... Petitioner

Through Mr. Udit Seth, Adv.

versus

PUNJ LLOYD LTD.

..... Respondent

Through Mr. vivek Jain and Mr. Manish
Shekhari, Advs.

CORAM:

HON'BLE MR. JUSTICE RAJIV SHAKDHER

RAJIV SHAKDHER, J. (ORAL)

1 The petitioner has approached this Court on account of the learned Arbitrator recusing from the matter. This aspect is reflected in the procedural order dated 05.07.2018 passed by the learned Arbitrator. For the sake of convenience, the same is extracted below:

“The proceedings were listed today for the evidence of the claimant's witness Mr. Sanjeev Khokha. The witness was present. However, Ld. Counsel for the respondent sought time on the ground that Ms. Gurkamal Hora Arora, Ld. Counsel who is to conduct the cross examination of the witness is held up in several matters before the Hon'ble Delhi High Court and will not be in a position to cross examine the witness today.

2 The request has been considered by the tribunal. There is only one witness from the claimant's side and their evidence has to be recorded and thereafter the Id.

Counsel for both the sides have to address arguments. Within the available time of just 16 days from today, the chances of the proceedings getting concluded and the award being passed within the time allowed by the High Court appear to be rather dim. The Ld. Counsel for the respondent also made it clear that they would oppose another extension of time on the ground that the claimant has not been able to adhere to the time frame set earlier which is the sole reason for the proceedings getting delayed, leaving little time from today for completion of the evidence, addressing of the arguments and the passing of the award. Taking note of this stand, the arbitral tribunal is of the view that no purpose would be served by continuing to act as the Sole Arbitrator as it would be extremely difficult and stressful to complete the proceedings and also pass the award with just 16 days left from today. The parties have also to be sensitive to the calendar and engagements of the arbitrator. In these circumstances, this tribunal has no option but to recuse itself from the arbitration proceedings. Accordingly, the tribunal recuses itself. A copy of this order may be submitted before the Hon'ble High Court for appropriate directions."

2 Learned counsel for the respondent says that while on that particular date i.e. 05.07.2018, the main counsel was not available for cross-examining the petitioner's (i.e. the original claimant's) witness, on other dates delay was occasioned on account of the petitioner.

3 Mr. Seth, who, appears for the petitioner, concedes that there was delay. However, learned counsel says that it would be in the interest of justice if a fresh opportunity were to be given for adjudication of the claims on merits.

4 Having perused the record, I am of the view that the arbitration proceedings should continue from the point at which they were

positioned when the learned Arbitrator passed the aforementioned order i.e. order dated 05.07.2018.

4.1 Having said so, the continuation of the arbitration proceedings can only be on the following terms so that they are concluded at the earliest:

- (i) Accordingly, Hon'ble Mr. Justice S.K. Misra, former Judge of this Court (Mob. No.9810039724) is appointed as an Arbitrator, in place of Hon'ble Mr. Justice R.V. Easwar.
- (ii) The arbitration proceedings will be held under the aegis of the Delhi International Arbitration Centre (in short 'DIAC').
- (iii) The fee deposited by the parties will be paid by the DIAC in accordance with its rules.
- (iv) The rules applicable to the arbitration proceedings, as is obvious, will be those which are framed by the DIAC.
- (v) Parties and their counsel will appear before the learned Arbitrator on 20.12.2018 at 03:00 PM. In case the date given by the Court is not convenient to the learned Arbitrator, he is requested to fix another date which is proximate to the aforementioned date.

5 The petition is disposed of with the aforesaid directions.

6 The Registry will despatch a copy of the order to the learned Arbitrator.

RAJIV SHAKDHER, J

NOVEMBER 29, 2018

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