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

+ **O.M.P. (T) (COMM.) 86/2018**

**PANDHEINFRACONS PVT LTD** ..... Petitioner

Through: Mr. Tanmaya Sinha with Ms. Kanika Sinha  
& Mr. Ankit Bhatnagar, Advs.

versus

**DSIIDC** ..... Respondent

Through: Ms. Anusuya Salwan with  
Ms. Nikita Salwan, Advs.

**CORAM:**

**HON'BLE MR. JUSTICE RAJIV SHAKDHER**

**ORDER**

% **20.08.2018**

**CAV 743/2018**

1. Since, the respondent has entered appearance, the Caveat stands discharged.

**I.A. No.11024/2018(for exemption)**

2. Allowed, subject to just exceptions.

**O.M.P. (T) (COMM.) 86/2018 & 11025/2018(for stay)**

3. Issue notice.

4. Ms. Anusuya Salwan accepts notice on behalf of the respondent.

5. Learned counsel for the respondent states that in view of the fact that the issue raised in the petition concerns a pure question of law, she does not wish to file a reply in the matter.

6. It is contended by Ms. Salwan that the respondent has appointed, one, Mr. S.P.Jhamb, Former Director General (Spl),

CPWD as the Arbitrator in respect of disputes obtaining between the parties herein.

7. It is not in dispute that Mr. S.P.Jhamb made a disclosure in terms of provisions of the Sixth Schedule of the Arbitration and Conciliation Act, 1996 (in short '1996 Act'). The disclosure has been made by Mr. S.P.Jhamb via a declaration dated 26.5.2018.

8. A perusal of the said declaration clearly shows that Mr. S.P.Jhamb has been appointed as an Arbitrator by the respondent in at least six cases in the past three years.

9. Given these circumstances, the petitioner had articulated its concerns to the respondent as regards the independence of Mr. S.P. Jhamb. It appears that despite several endeavours the issue has not been resolved. The petitioner has, thus, approached this Court for requisite relief.

10. Resisting the relief sought in the petition, Ms. Salwan says that the respondent has exercised its right under the contract and therefore, is entitled to appoint Mr. S.P.Jhamb, as an Arbitrator.

11. In my view, given the aforesaid facts obtaining in the matter, Mr. S. P. Jhamb's appointment does raise justifiable doubts with regard to the independence of Mr. S.P. Jhamb. A conjoint reading of provisions of Section 12(1)(a) with Explanation (1), and the provisions of Fifth Schedule, Entry No.22 of the 1996 Act does indicate that the petitioner's apprehension that Mr. S.P.Jhamb may not fulfil the test of independence appears to be correct.

11.1 For the sake of convenience, the said provisions are extracted herein under:-

*“12. **Grounds for challenge.**– [(1) When a person is approached in connections with his possible appointment as an arbitrator, he shall disclose in writing any circumstances. –*

*(a) such as the existence either direct or indirect, of any past or present relationship with or interest in any of the parties or in relation to the subject-matter in dispute, whether financial, business, professional or other kind, which is likely to give rise to justifiable doubts as to his independence or impartiality; and*

.....

*Explanation 1. – The grounds stated in the Fifth Schedule shall guide in determining whether circumstances exist which give rise to justifiable doubts as to the independence or impartiality of an arbitrator.*

.....

*22. The arbitrator has within the past three years been appointed as arbitrator on two or more occasions by one of the parties or an affiliate of one of the parties.”*

*(Emphasis is mine)*

12. Therefore, in my opinion, as correctly argued on behalf of the petitioner, Mr. S.P.Jhamb cannot continue as an Arbitrator in the matter.

13. At this stage, learned counsel for the parties agree that Ms.Justice Rekha Sharma (Retired, Delhi High Court) be appointed as an Arbitrator in the matter to hasten the arbitration proceedings.

14. Accordingly, Ms.Justice Rekha Sharma, Former Judge of this Court is appointed as an Arbitrator.

15. Furthermore, counsel for the parties say that they are also agreeable to the rules and the fee schedule applicable to Arbitrations conducted under the aegis of Delhi International Arbitration Centre (for short 'DIAC') being applied to the instant arbitration proceedings. It is ordered accordingly.

16. Resultantly, the petition along with the pending application is disposed of in the aforesaid terms.

**RAJIV SHAKDHER, J**

**AUGUST 20, 2018**

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