

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **OMP 18/2017 & IA 13032/2017**

Reserved on: 8th February, 2018
Date of decision: 21st February, 2018

GAMMON INDIA LIMITED

..... Petitioner

Through: Mr.Arun Kumar Varma, Sr. Adv.
with Mr.Abhay Raj Varma,
Mr.Ashish Joshi & Mr.Vishal
Nautiyal, Advs.

versus

AMBIENCE PRIVATE LIMITED

..... Respondent

Through: Mr.P.K. Agrawal, Ms.Mercy
Hussain & Ms.Tanya Sharma,
Advs.

CORAM:
HON'BLE MR. JUSTICE NAVIN CHAWLA

1. This petition has been filed by the petitioner under Section 11 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as 'the Act') praying for termination of the mandate of the Arbitrator appointed by the respondent and for appointment of another Sole Arbitrator to adjudicate the disputes that have arisen between the parties in relation to the award of 'Development Works' awarded to the petitioner by the respondent vide its Letter of Award dated 18th August, 2013.
2. The Letter of Award dated 18th August, 2013 contains an Arbitration Agreement between the parties, which is reproduced herein below:-

“28) Arbitration: In the event of any dispute or differences between the Parties arising howsoever from this Contract, the same shall, unless amicably settled, be referred to the Arbitrator of M/s Ambience Pvt. Ltd. for final settlement. The arbitration proceedings shall be held in New Delhi and shall be binding on both the Parties.”

3. The disputes between the parties had been referred to arbitration and a Sole Arbitrator was appointed, who entered upon reference on 18th March, 2016. Various proceedings were also held before the Sole Arbitrator, which are not detailed herein.
4. As the period for making of the award under Section 29A of the Act had expired, a petition under Section 29A (4) was also filed before this Court and this Court vide its order dated 21st September, 2017 passed in OMP (Misc.) (Comm.) No.29/2017 had extended the time for making of the final award by one year with effect from 4th August, 2017.
5. The Sole Arbitrator, however, vide his order dated 21st September, 2017, withdrew from the office of the Arbitrator.
6. The respondent, immediately on such withdrawal, appointed another Sole Arbitrator vide its communication of the same date (though wrongly mentioned as 21st September, 2016).
7. The newly appointed Arbitrator also accepted the appointment and vide his letter dated 21st September, 2017 called upon the parties to attend the hearing on 23rd October, 2017. The Arbitrator also submitted his disclosure in terms of Section 12 (1) of the Act along with the above notice.

8. The petitioner has filed the present petition primarily on the ground that the respondent could not have appointed the Sole Arbitrator without consulting with the petitioner and such appointment is, therefore, non-est. On the other hand, counsel for the respondent, relying upon the above quoted Arbitration Agreement, has submitted that the Arbitration Agreement between the parties empowers the respondent to appoint the arbitrator and, therefore, the mandate of the Arbitrator so appointed cannot be challenged by the petitioner.

9. Section 15(2) of the Act provides that, where the mandate of an Arbitrator terminates, a substitute Arbitrator shall be appointed according to the rules that were applicable to the appointment of the Arbitrator being replaced. In the present case, the arbitration agreement empowers the respondent to appoint the arbitrator for adjudication of the disputes. In my separate judgment passed in OMP (T) (Comm.) No.101/2017 (*Bhayana Builders Pvt. Ltd Vs. Oriental Structural Engineers Pvt. Ltd.*), I have already rejected the contention that Section 12(5) of the Act would make such Arbitration Agreements unenforceable.

10. For the reasons stated in the said judgment, therefore, once the earlier appointed Sole Arbitrator had withdrawn himself from the position as an Arbitrator, the substitute Arbitrator had to be appointed in terms of the Arbitration Agreement between the parties i.e. by the respondent alone and such appointment cannot be faulted on the basis of Section 12(5) of the Act.

11. I may note that as claimed by the respondent in its reply filed to the petition and to which the petitioner has not filed any rejoinder, even the earlier Arbitrator was appointed by the respondent alone.

12. The petitioner has not contended that the newly appointed Arbitrator would be ineligible under any ground mentioned in the Seventh Schedule of the Act. The only ground raised by the petitioner is regarding the haste with which the respondent appointed the new Arbitrator and the newly appointed Arbitrator accepted such appointment. I am afraid that this itself cannot be a ground to challenge the appointment.

13. In view of the above, I find no merit in the present petition and the same is accordingly dismissed, however, leaving it open to the petitioner to agitate all other contentions regarding the impartiality or independence of the Arbitrator so appointed before the Arbitrator and in such other proceedings as may be open to it in law. There shall be no order as to costs.

NAVIN CHAWLA, J

FEBRUARY 21, 2018
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