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

Date of Decision : 17.05.2019

+ O.M.P. (T) (COMM.) 45/2019 & IA 6998/2019

AVNEET GOYAL

..... Petitioner

Through: Mr.Jai Sahai Endlaw, Mr.Gaurav Aggarwal, Mr.Shivansh Soni, Ms.Deepika Mishra, Advs.

versus

UNION OF INDIA

..... Respondent

Through: Mr.Rahul Sharma, Mr.C.K.Bhatt, Mr.Pradeep Jha, Advs.

(17) O.M.P. (T) (COMM.) 46/2019

ATC FOOD PVT. LTD.

..... Petitioner

Through: Mr.Jai Sahai Endlaw, Mr.Gaurav Aggarwal, Mr.Shivansh Soni, Ms.Deepika Mishra, Advs.

versus

UNION OF INDIA & ORS.

..... Respondents

Through: Mr.Rahul Sharma, Mr.C.K.Bhatt, Mr.Pradeep Jha, Advs.

(18) O.M.P. (T) (COMM.) 47/2019

MUBARAK OVERSEAS PVT. LTD.

..... Petitioner

Through: Mr.Jai Sahai Endlaw, Mr.Gaurav Aggarwal, Mr.Shivansh Soni, Ms.Deepika Mishra, Advs.

versus

UNION OF INDIA & ORS. Respondents
Through: Mr.Rahul Sharma, Mr.C.K.Bhatt,
Mr.Pradeep Jha, Advs.

(19) O.M.P. (T) (COMM.) 48/2019
MUBARAK OVERSEAS PVT. LTD. Petitioner
Through: Mr.Jai Sahai Endlaw, Mr.Gaurav
Aggarwal, Mr.Shivansh Soni, Ms.Deepika
Mishra, Advs.

versus

UNION OF INDIA& ORS. Respondents
Through: Mr.Rahul Sharma, Mr.C.K.Bhatt,
Mr.Pradeep Jha, Advs.

CORAM:
HON'BLE MR. JUSTICE NAVIN CHAWLA
NAVIN CHAWLA, J. (Oral)

1. These petitions have been filed by the petitioner(s) under Section 14 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as the 'Act') praying for a declaration on the termination of the mandate of the Sole Arbitrator appointed by the respondent and for appointment of an independent Sole Arbitrator to adjudicate the disputes.

2. The dispute between the parties is in relation to the supply of Sharbati Rice by the petitioner(s) to the respondents.

3. The petitioner(s) had earlier filed applications under Section 9 of the Act. The petitioner(s), except in OMP(T)(Comm.) No. 47/2019, had also filed applications under Section 11 of the Act seeking appointment of an Arbitrator. These petitions were disposed of by this Court on the submissions made by the respondent that an Arbitrator has already been appointed by the respondent for adjudicating the disputes.

4. It is the case of the petitioner (s) that thereafter nothing was heard from the Arbitrator. It is not denied that even the petitioner(s) did not make any endeavour to enquire about the arbitration proceedings or have them expedited.

5. The present petitions have been filed by the petitioner(s) as the respondents, by the following letters against each of the petitions, have appointed Mr.Ramesh Chander, Deputy Legal Advisor & Arbitrator (DGS&D), as the Sole Arbitrator:-

<i>OMP (T) (COMM) 45/2019</i>	<i>OMP (T) (COMM) 46/2019</i>	<i>OMP (T) (COMM) 47/2019</i>	<i>OMP (T) (COMM) 48/2019</i>
<i>18.02.2019</i>	<i>22.02.2019 & 25.02.2019</i>	<i>21.02.2019</i>	<i>26.02.2019</i>

6. The Arbitrator by the following communications called upon the petitioner(s) to file its Statement of Claims as also

fixed a schedule for completion of pleadings and for hearing of the disputes:

<i>OMP (T) (COMM) 45/2019</i>	<i>OMP (T) (COMM) 46/2019</i>	<i>OMP (T) (COMM) 47/2019</i>	<i>OMP (T) (COMM) 48/2019</i>
<i>15.04.2019</i>	<i>30.04.2019</i>	<i>15.04.2019</i>	<i>15.04.2019</i>

7. The petitioner(s) have filed the present petitions challenging the appointment of Mr.Ramesh Chander as an Arbitrator.

8. Counsel for the petitioner(s) submits that the appointment having been made almost one year after the statement made by the counsel for the respondents before this Court, is of no consequence. Allowing the respondent to appoint an Arbitrator would infact be granting benefit to the respondent of its own wrong. He submits that Section 29A of the Act which provides that the arbitration proceedings must culminate in an Award within the period of one year, would stand defeated if such appointments are to be allowed. He further submits that Mr.Ramesh Chander has been appointed as an Arbitrator in more than 115 cases by the respondents and therefore, would be ineligible to act as an Arbitrator. He further placed reliance on the order dated 11.01.2019 passed by this Court in OMP(T)(Comm.) No.131/2018 titled ***Surinder Kumar Garg vs. Union of India & Ors.***, wherein this Court had appointed an

Arbitrator for adjudicating the disputes that have arisen between the parties therein. He submits that the disputes in that petition are similar to the ones that have arisen between the parties herein and therefore, it would be in the fitness of things that the same Arbitrator is appointed by this Court.

9. On the other hand, counsel for the respondent submits that the respondent had appointed one Mr.Y.K.Singh by the following appointment letters:-

<i>OMP(T)(Comm.) No.45/2019</i>	<i>OMP(T)(Comm.) No.46/2019</i>	<i>OMP(T)(Comm.) No.47/2019</i>	<i>OMP(T)(Comm.) No.48/2019</i>
<i>23.02.2018 and 01.03.2018</i>	<i>23.02.2018 and 01.03.2018</i>	<i>23.02.2018</i>	<i>27.06.2018</i>

10. He submits that Mr.Y.K.Singh never proceeded with the arbitration proceedings and on his superannuation from service in September, 2018, a need arose for appointment of a substitute Arbitrator. He submits that exercising the right under the Contract(s), the respondent has appointed the substitute Arbitrator on the dates mentioned hereinabove.

11. He submits that the Arbitrator is otherwise not ineligible under Section 12(5) of the Act read with the Seventh Schedule and therefore, if the petitioner(s) have any grievance on his

appointment, the only remedy of the petitioner(s) is to file an application before the Arbitrator himself.

12. As far as the order dated 11.01.2019 passed by this Court in OMP (T)(Comm.) No.131/2018 is concerned, he submits that the same is distinguishable inasmuch as in the said case, the respondent did not appoint an Arbitrator till the filing of the petition but appointed the Arbitrator only after the petition had been filed therein.

13. I have considered the submissions made by the counsels for the parties.

14. As has been stated by the counsel for the respondent, the respondent had appointed Mr.Y.K.Singh as an Arbitrator and based on the statement of such appointment having been made the petitions filed by the petitioner(s) under Sections 9 and 11 of the Act were disposed of.

15. Mr.Y.K.Singh never proceeded with the arbitration. It is a matter of fact that the petitioner(s) also did not take any steps for having the arbitration proceedings expedited before Mr.Y.K.Singh. Infact, both the parties slept after the appointment of the Arbitrator. On superannuation of Mr.Y.K.Singh, it is stated that his mandate stood terminated requiring the respondent to appoint a substitute Arbitrator. Exercising its powers under Section 15(2) of the Act, the respondent appointed the present Arbitrator by letters

mentioned hereinabove. The Arbitrator has already entered upon the reference and has issued notice to the parties for filing of their pleadings as also for their appearance. Once the substitute Arbitrator has already been appointed, unless such Arbitrator is ineligible under Section 12 (5) of the Act read with the Seventh Schedule to the Act, it would not be open to this Court to interfere with such appointment. If the petitioner(s) have any grievance on the appointment of the Arbitrator as to the Arbitrator's independence or impartiality, their remedy has to be in form of an application under Section 13 of the Act before the Arbitrator himself. This is so held by the Supreme Court in **HRD Corporation vs. GAIL (India) Ltd.** (2018) 12 SCC 471.

16. The submission of the counsel for the petitioner(s) that almost more than one year has lapsed since the passing of the orders in the earlier round of petitions and therefore, the mandate of the Arbitrator, in any case, would have terminated, is again of no relevance to the present petitions. Admittedly, the present Arbitrator has entered reference only on the dates hereinabove mentioned. Even otherwise, under Section 29A of the Act, on the expiry of the period mentioned therein, it is the mandate of the Arbitrator that terminates and not the arbitration proceedings themselves. The substitute Arbitrator has already been appointed by the respondent, therefore, the provision of Section 29A of the Act can come to no avail of the petitioner(s).

17. As far as the submission of the petitioner(s) that allowing the respondents to appoint an Arbitrator at this stage would be granting benefit to the respondents of their own wrong, the same again has no force. As noted hereinabove, it is not the case of the petitioner(s) that the petitioner(s) have also taken any steps to expedite the arbitration proceedings. If anything, they are equally guilty of the delay in the arbitration proceedings.

18. The submission of the counsel for the petitioner(s) that the Arbitrator so appointed has been appointed in other 115 cases also, may be relevant to be considered by the Arbitrator himself in terms of the Fifth Schedule to the Act and cannot be a ground to terminate his mandate in the present proceedings.

19. Reliance of the petitioner on the order dated 11.01.2019 passed in OMP(T)(Comm.) No.131/2018 is also of no avail inasmuch as in the said case, the respondent had failed to appoint an Arbitrator before filing of the petition. In those circumstances, this Court relying upon the judgment in ***Datar Switchgears Ltd. vs. Tata Finance Ltd. & Anr.*** (2000) 8 SCC 151, held that the respondent had forfeited its right to appoint an Arbitrator and proceeded to appoint an Arbitrator. In the present case, the respondent has appointed an Arbitrator before filing of the present petitions and infact the present petitions are challenging such appointment.

20. In view of the above, while reserving the liberty of the petitioner(s) to challenge the appointment of the Arbitrator in accordance with law, the present petitions are dismissed.

NAVIN CHAWLA, J

MAY 17, 2019
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