

\$~A-24

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

%

Date of decision: 17.09.2019

+ ARB.P. 592/2019

AMBUJA CEMENT

..... Petitioner

Through: Mr. Anil Seth, Advocate

versus

SETHI ENGINEERS & FOUNDRY LTD (FORMERLY KNOWN
AS KITTI STEELS LTD)

..... Respondent

Through: Mr. Naveen Sharma, Advocate

CORAM:

HON'BLE MS. JUSTICE JYOTI SINGH

JYOTI SINGH, J. (ORAL)

I.A. No. 12845/2019 (Exemption)

Exemption allowed subject to all just exceptions.

Application stands disposed of.

ARB.P. 592/2019

1. This is a petition under Section 11 of the Arbitration & Conciliation Act, 1996 ('Act') for appointment of a second Arbitrator to adjudicate the disputes between the parties.
2. The Arbitration Clause between the parties reads as under:

"29.0 Arbitration: (in Contract No.PM/EC/002)

29.1 In case of any dispute or differences arising between the parties in respect of any matter of the contract, the matter shall be settled mutually. If the settlement is not reached, the matter will be referred to Arbitration. The Arbitrator will be appointed one each by the parties

concerned and these arbitrators shall appoint an umpire. The decision of the arbitrators and/ or umpire shall be final and binding on the parties. Further, the arbitration proceedings shall be as per the Arbitration Act 1940 and its amendments made from time to time.

29.3 The venue of the Arbitration proceedings shall be New Delhi"

3. In accordance with the said Arbitration Clause, the petitioner and the respondent had nominated their Arbitrator. The two Arbitrators could not reach a consensus on the appointment of the Presiding Arbitrator and had approached this Court.
4. Vide order dated 21.01.1999 this Court had appointed a third Arbitrator. After the said nomination, however, the Arbitrator nominated by the respondent, resigned as an Arbitrator.
5. Since the respondent had failed to nominate its Arbitrator, the petitioner approached this Court to appoint an Arbitrator on behalf of the respondent, by filing a petition under Section 11 of the Act.
6. On 09.10.2007, this Court had appointed Mr. Justice J.K. Mehra, a former Judge of this Court as the second Arbitrator on behalf of the respondent. Due to the sudden death of the Arbitrator of the petitioner, Mr. Justice S.S. Chaddha (Retd.), another former Judge of this Court was appointed as a co-Arbitrator. Thereafter, the proceedings continued and the matter was to be taken up for final arguments.
7. In the proceedings held on 16.05.2019, the matter was adjourned to 02.08.2019 for hearing. Vide email dated 30th June 2019, family of Mr. Justice J.K. Mehra (Retd.) informed about his sudden demise.

Learned Counsel for the petitioner contends that ever since the respondent has not nominated its Arbitrator and hence the present petition has been filed.

8. Mr. Naveen Sharma, Advocate enters appearance on behalf of the respondent.
9. The parties have consented to the appointment of Mr. Justice K.K. Lahoti, Former Judge of the Madhya Pradesh High Court to be appointed as an Arbitrator for and on behalf of the respondent.
10. With the consent of the parties, I hereby appoint Hon'ble Mr. Justice K.K. Lahoti, Former Judge of the Madhya Pradesh High Court as a co-Arbitrator to adjudicate the disputes between the parties. The learned Arbitrator will give a disclosure under Section 12 of the Act before proceeding with the matter.
11. Needless to say that the proceedings will resume from the stage, they are pending.
12. The petition is disposed of in the aforesaid terms.

न्यायमेव जयते

JYOTI SINGH, J

SEPTEMBER 17, 2019

Rd/