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IN THE HIGH COURT OF DELHI AT NEW DELHI

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O.M.P. (T) (COMM.) 131/2018

SURINDER KUMAR GARG

..... Petitioner

Through: Mr.Vijay Kasana, Adv.

versus

UNION OF INDIA & ORS.

..... Respondents

Through: Mr.Praveen Kumar Jain &
Ms.Rashmi Kumari, Advs. with
Mr.K.K. Tiwari, Deputy Director of
respondent.

CORAM:

HON'BLE MR. JUSTICE NAVIN CHAWLA

ORDER

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11.01.2019

11.This petition under Section 14 read with Section 15 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as the 'Act') has been filed by the petitioner seeking termination of the mandate of the Arbitrator appointed by the respondents and for an appointment of a substitute Arbitrator.

12.It is the case of the petitioner that the petitioner had invoked the Arbitration Agreement between the parties vide its letter dated 03.10.2017. Having failed to receive a response from the respondents, the petitioner filed a petition under Section 11 of the Act seeking appointment of an Arbitrator being ARB.P. 102/2018. When the petition came up for hearing before this Court on 22.03.2018, the learned counsel appearing for the respondents submitted that the respondents have appointed a Sole Arbitrator in

accordance with the Agreement. Based on this statement, the petition was disposed of. However, as the petitioner did not receive any notice of proceedings from the Arbitrator, the petitioner vide its legal notice dated 18.07.2018 called upon the respondents to appoint a new Arbitrator. Again as there was no response, the present petition was filed by the petitioner.

13. On 17.12.2018 the learned counsel for the respondents submitted that the respondents have appointed a substitute Arbitrator vide letter dated 06.11.2018. As the petitioner contended that the petitioner has received no such intimation, the respondents were called upon to place the said letter on record.

14. The respondents have complied with the above order and have placed the letter dated 06.11.2018 on record which is reproduced hereinbelow:-

“Arbitration cases relating to Army Purchase Organization (APO) and Department of Commerce (Supply Division) will be dealt with by following Officers:-

(i) Shri Ramesh Chander, Deputy Legal Adviser will deal with cases referred for Arbitration on or after 1st July, 2017.

(ii) Ms. Renu Pandey, Assistant Legal Adviser will deal with Arbitration cases which are pending on or prior to 30th June, 2017.”

15. A reading of the above would show that it was not a letter of appointment of an Arbitrator for adjudicating the disputes raised by the petitioner but it is a general office order issued by the respondents for all arbitration proceedings that are initiated by or against them. The actual letter of appointment was issued by the

respondents only on 17.12.2018, which has also been placed on record by the respondent.

16. In view of the above and in terms of the judgment of the Supreme Court in *Datar Switchgears Ltd vs Tata Finance Ltd. & Anr*, (2000) 8 SCC 151, the respondents have lost their right to appoint an Arbitrator.

17. I therefore terminate the mandate of the Arbitrator appointed by the respondents and appoint Mr. Pramod B Agarwal, Advocate (R/o C-34, Niti Bagh, South Extension, Near Kamla Nehru College, South Extension, New Delhi, Delhi 110049, Mobile: 9999105066) as a substitute Arbitrator for adjudicating the disputes that have arisen between the parties in relation to the Agreement between the parties.

18. The Arbitrator shall give disclosure under Section 12 of the Act before proceeding with the reference.

19. The petition is allowed in the above terms, with no order as to cost.

20. *Dasti*.

NAVIN CHAWLA, J

JANUARY 11, 2019/rv