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

Decided on 26th February, 2021

+ O.M.P. (T) (COMM.) 2/2021

M/S CAPARO FINANCIAL SOLUTIONS LTD Petitioner
Through Mr. Shaleen Srivastava and Mr.
Shubhankar Sengupta, Advs.

versus

M/S BHAKTI ENTERPRISES & ORS. Respondents
Through Mr. Bhushan M. Oza, Adv.

CORAM:
HON'BLE MR. JUSTICE C. HARI SHANKAR

O R D E R (ORAL)

% **26.02.2021**

1. Arbitral proceedings are pending between the parties. They were proceeding before Mr. Ashok Mathur, who had been appointed as an arbitrator by the petitioner *vide* letter dated 16th August, 2018. However, during the course of the proceedings, the learned arbitrator withdrew from the proceedings on 26th November, 2020, citing personal difficulties. It is in these circumstances that the petitioner has approached this Court for appointing a substitute arbitrator.

2. It is obvious that as the arbitral proceedings are going on, a substitute arbitrator has to be appointed.

3. Learned counsel, who had appeared for the respondents on the last date of hearing, had submitted that his client would, in all

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possibility, have no objection to appointment of a substitute arbitrator, as the earlier arbitrator withdrew from the proceedings, but he would have to place his Vakalatnama on record.

4. Today, another learned Counsel appears for the respondents and submits that his client wants to place certain aspects on record. To an incisive query from the Court, it appears that the grievance of learned Counsel for the respondents is only that his right to file the statement of defence has been closed. He, therefore, submits that if he is permitted to file the statement of defence, he would have no objection to a substitute arbitrator being appointed.

5. In proceedings under Section 11(6) of the Conciliation and Arbitration Act, 1996 (hereinafter referred to as “the 1996 Act”), I cannot possibly rule on the entitlement or otherwise of the parties to file pleadings before the learned arbitrator. It would be open to the respondents to apply to the learned arbitrator for permission to file statement of defence, despite its right having been closed and, if any such application is moved, the learned arbitrator would, no doubt, consider the request on its merit. This Court does not express any opinion in that regard.

5. The mandate of this Court under Section 11(6) of the 1996 Act is only to ensure that the arbitral proceedings are not derailed owing to the withdrawal, therefrom, by the earlier arbitrator.

6. In view thereof, this Court has disposed of the petition by

appointing Ms. Vibha Mahajan Seth, Advocate (phone No.9810702410 and email ID: vibhsmj@yahoo.com.sg) as the learned arbitrator to arbitrate on the disputes between the parties in place of Mr. Ashok Mathur, who has withdrawn from these proceedings. The learned Arbitrator would commence the proceedings from the stage at which they stood at the time when Mr. Ashok Mathur withdrew from these proceedings. The learned Arbitrator would also submit the requisite disclosure under Section 12(2) of the 1996 Act within a period of one week from re-entering into the proceedings.

7. Learned Counsel for the parties are directed to get in touch with the arbitrator within 48 hours from the receipt by them of a certified copy of this order. As the mandate of the earlier arbitrator had expired, the present proceedings would be treated as a fresh arbitration with the mandate of the arbitrator commencing *de novo* from the date she enters on reference.

8. In view of the aforesaid directions, this petition is disposed of.

C.HARI SHANKAR, J

FEBRUARY 26, 2021

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