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IN THE HIGH COURT OF DELHI AT NEW DELHI

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ARB. P. 250/2020

M/S DATAWISE MANAGEMENT SERVICES INDIA PVT LTD

..... Petitioner

Through: Mr. Abhijeet Swaroop, Adv.

versus

AIRPORTS AUTHORITY OF INDIA

..... Respondent

Through: Mr. Digvijay Rai, Adv.

CORAM:

HON'BLE MR. JUSTICE V. KAMESWAR RAO

ORDER

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31.08.2020

This matter is being heard through video-conferencing.

1. This is a petition filed under Section 11 of the Arbitration & Conciliation Act, 1996 for appointment of an Arbitrator.
2. Learned counsel for the petitioner has drawn my attention to the relevant arbitration clause being 9.2(ii), which reads as under:-

“ii. Disputes or difference shall be referred for adjudication through arbitration by a Tribunal having Sole Arbitrator where tendered amount is Rs.30000 Cr or less. Where tendered value is more than Rs.300.00 Cr. Tribunal shall consist of three arbitrators as above. The requirements of the Arbitration and Conciliation Act, 1996 (26 of 1996) and any further statutory modifications or reenactment thereof and the rules made thereunder and for the time being in force shall be applicable.

It is a term of this agreement that the party invoking Arbitration shall give a list of disputes with amounts, claimed, if any, in respect of each such disputes along with the notice for appointment of Arbitrator and giving reference to the decision of the DRC.

It is also term of this agreement that any member of Arbitration Tribunal shall be a post graduate with experience in handling public works, services, agreements at a level not lower than Executive Director. This shall be treated as mandatory qualification to be appointed as Arbitrator.

Parties, before or at the time of appointment of Arbitral Tribunal may agree in writing for fast track arbitration as per the Arbitration and Conciliation Act, 1996 (26 of 1996) as amended in 2015.

Subject to provision in the Arbitration and Conciliation Act, 1996 (26 of 1996) as amended in 2015 whereby the counter claims if any can be directly filed before the arbitrator without any requirement of reference by the Appointing Authority, the Arbitrator shall adjudicate on only such disputes as are referred to him by the appointing authority and give separate award against each disputes and claim referred to him and in all cases where the total amount of the claims by any party exceed Rs.1,00,000/- the Arbitrator shall give reasons for the award.

It is also a term of the agreement that if any fees are payable to the arbitrator, these shall be paid as per the Act. It is also a term of the agreement that the arbitrator shall be deemed to have entered on the reference on the date he issues notice to both the parties calling them to submit their statement of claims and counter statement of claims.

The place of the arbitration shall be New Delhi.”

3. He has also drawn my attention to the notice dated March 16, 2020 invoking arbitration clause. Pursuant thereof, reminder dated June 19, 2020 was sent by the petitioner to the respondent, calling upon the respondent to appoint an Arbitrator.

4. On June 23, 2020, the respondent has forwarded a panel of three names to the petitioner to choose one name out of the said panel, to be appointed as an Arbitrator. According to the learned counsel for the petitioner, the petitioner did respond to the names suggested by the respondent but stating that they have doubt insofar as their independence is concerned. An objection was taken that the reply given to the invocation notice was beyond a period of 30 days. It also requested the respondent to appoint a retired Judge of this Court, as an Arbitrator.

5. Mr. Digvijay Rai, learned counsel for the respondent justifies the reply to the invocation notice beyond a period of 30 days on the ground of pandemic. He also relies upon the order of the Supreme Court in a *suo moto* motion where the limitation period on all aspects have been suspended. Even on merit, it is his submission that when the names have been proposed from the panel maintained by the Airports Authority of India, there cannot be any doubt on the independence of the names suggested to the petitioner.

6. During the course of hearing, it has also been mentioned that even the panel consists of retired Judges of this Court.
7. If that be so, this Court appoints Justice G.P. Mittal, a retired Judge of this Court, as an Arbitrator, who shall adjudicate the disputes and differences between the parties. His appointment shall be regulated by the Rules of the DIAC. The parties shall be at liberty to take all pleas available to them, both on facts and in law.
8. Let a copy of this Order be sent to Justice G.P. Mital (Retd.) for information.
9. Petition is disposed of.

V. KAMESWAR RAO, J

AUGUST 31, 2020/ak