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

% ***Date of decision: 23.07.2021***

\+ ARB.P. 242/2021

NATIOANL RESEARCH DEVELOPMENT CORPORATION & ANR. ......Petitioners

Through: Mr. S.N.Choudhri, Advocate

Versus

M/S SOM SHIVA IMPEX LTD. ...... Respondent

Through: Mr. Shantnu Singh, Advocate

CORAM:
HON'BLE MR. JUSTICE SURESH KUMAR KAIT

J U D G M E N T ***(oral)***

The hearing has been conducted through video conferencing.

1. Petitioner No. 1- National Research Development Corporation (NRDC), is an enterprise of Department of Scientific and Industrial Research and is registered under the Companies Act and petitioner No. 2 is the Department of Scientific and Industrial Research (DSIR) under the Ministry of Science and Technology, Technology Bhawan, New Mehrauli Road, New Delhi.

2. Respondent - M/s Sam Shiva (lmpex) Ltd., (SSIL), is a Company incorporated under The Companies Act, which is engaged in the research and manufacturing of plastic master batches, who had submitted a project proposal to develop "New Process Development for Special Elastomer

Compound”. The DSIR after considering the proposal of the respondent agreed to partially fund the project of the respondent- SSIL by providing the financial assistance to the tune of Rs.2,40,00,000/-, (Rupees Two Crores Forty Lacs Only). In this regard, petitioners and respondent had entered into a Tripartite Agreement dated 12.10.2011 for development of process (New Process Development for Special Elastometer Compound) and for the repayment of the funds availed by the respondent- SSIL, the parties had entered into a Royalty Collection Agreement dated 12/10/2011.

3. According to the petitioners, the project was successfully completed by the respondent and this was confirmed by the letter dated 13-04-2016 of the petitioner-DSIR. Thereafter, respondent became liable to refund the financial assistance in five annual equal instalments. The respondent accordingly paid the first instalment of Rs.64,74,000/- inclusive of service tax, for financial year 2016-2017 vide letter dated 06.12.2016. However, thereafter, despite request of petitioner No.1 to respondent vide its letter dated 19.03.2018 for payment of the second instalment of Rs.62,40,000/- plus applicable GST of Rs.2,80,000/- for financial year 2017-2018, the same was not made and instead, vide its letter dated 27.03.2018, respondent expressed its inability to make payment of the second instalment at that

point of time but promised to pay the same at a later appropriate stage.

4. The case of petitioners is that despite repeated requests, respondent failed to make the payments and so, on 11.12.2018 petitioners issued a notice to the respondent to invoke arbitration in terms of Clause No.15 of the Tripartite Agreement 12.10.2011 between the parties. According to petitioners, a total sum of Rs.3,00,54,648/-, (Rs. Three Crores Fifty-Four Thousand Six Hundred and Forty-Eight only), comprising of the balance four instalments, the service tax and the interest on the delayed payment, is outstanding against the respondent.

5. At the hearing, learned counsel for the petitioners points out that the arbitration clause contained in the Tripartite Agreement dated 12/10/2011, provides for the reference of the disputes and differences to the Sole Arbitrator of the "Secretary of Department of Legal Affairs Govt of India" or his nominee. However, since petitioners are also Government Organisations, in view of limitations and conditions mentioned in Schedule Five and Schedule Seven, of Section 12 of the Arbitration and Conciliation Act, 1996, the appointment of Secretary of Department of Legal Affairs, Govt of India, is likely to give rise to justifiable doubts or to his impartiality or even his ineligibility and, therefore, to avoid any objection, at any later

stage, the petitioners are seeking appointment of a Sole Arbitrator through this Court.

6. Learned counsel for respondents submits that in view of aforesaid submission of learned counsel for petitioners, there is no objection to appointment of Sole Arbitrator by this Court, however, all issues should be left open to be raised before the learned Arbitrator.

7. In view of the above, the present petition is allowed. Accordingly, **Justice G.P.Mittal (Retd.) (Mobile: 9910384619)** is appointed Sole Arbitrator to adjudicate the dispute between the parties.

8. The fee of the learned Arbitrator shall be governed by the Fourth Schedule of the Arbitration and Conciliation Act, 1996.

9. The learned Arbitrator shall ensure compliance of Section 12 of Arbitration and Conciliation Act, 1996 before commencing the arbitration.

10. Needless to say, all issues are left open for agitation by the parties and consideration by the learned Arbitrator.

11. With aforesaid directions, the present petition is accordingly disposed of.

(SURESH KUMAR KAIT)
JUDGE

JULY 23, 2021/r