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

% ***Date of decision: 13.07.2021***

+ **ARB.P. 356/2021**

HASHNINE SYSTEMS PRIVATE LIMITED .. Petitioner
Through: Mr Avinash Sharma, Advocate

Versus

**EASTERN AIR COMMAND HEAD QUARTERS), INDIAN AIR
FORCE Respondent**
Through: Mr. Rajesh Kumar Das, Advocate
with Mr. Shailesh Sharma

CORAM:
HON'BLE MR. JUSTICE SURESH KUMAR KAIT

J U D G M E N T (oral)

1. The present petition has been preferred seeking appointment of an Arbitrator under Section 11(6) of the Arbitration and Conciliation Act, 1996 for adjudication of disputes which have arisen between the parties.

2. The case of the petitioner in nutshell is that respondent has arbitrarily invoked the Bank Guarantee No. 00960100000226 dated 14.03.2014 for an amount of Rs 21,36,100/- and Bank Guarantee No. 00960100000249, dated 26.06.2014 for an amount of Rs.10,68,035/- and its various efforts to approach the respondent to resolve the disputes, went in vain. In such circumstances, petitioner sent a Legal Notice dated 16.11.2018 to

respondent to refund amount of Rs.32,04,135/- along with the @18% and further sent a notice dated 02.03.2020 to either make the payment within 15 days or consider the notice as 'Notice Invoking Arbitration under Clause 3 of the Part III -Standard Conditions of Supply Orders No. EAC/SO POV /03/2013-14 dated 03.03.2014 (12 Bases) (Main Order) and EAC/SO POV /01/2014-15 dated 26.05.2014 (Repeat Order)'.

3. In terms above, respondent was called upon to appoint an Arbitrator within sixty days to adjudicate the dispute(s) which arose between the parties in terms of aforesaid Clause-3. However, since no reply to the notice dated 02.03.2021 was received and respondent did not appoint an Arbitrator in accordance/ conformity with the provisions of the *Arbitration and Conciliation Act, 1996*, the present petition has been preferred.

4. On behalf of respondent, it is submitted that an Arbitrator has already been appointed and therefore, the present petition is not maintainable.

5. The aforesaid submission on behalf of respondent is strongly objected to by learned counsel for petitioner who submits that the unilateral appointment of an Arbitrator by the respondent is not acceptable to petitioner and Arbitrator has to be appointed in terms contained in Clause 3 of the Part III - Standard Conditions of Supply Orders No. EAC/SO POV

/03/2013-14, dated 03.03.2014 (12 Bases) (Main Order) and EAC/SO/POV/01/2014-15 dated 26.05.2014 (Repeat Order).

6. Both sides have been heard and record of this case has been perused.

7. Petitioner has invoked Arbitration vide notice dated 02.03.2020.

According to petitioner, claims to the tune of Rs.32,00,000/- approximately are pending against respondent. The arbitration agreement between the parties and invocation of arbitration are not disputed by the respondent. No party can be permitted to unilaterally appoint an Arbitrator, as the same would defeat the purpose of unbiased adjudication of dispute between the parties.

8. In view of the above, the present petition is allowed. Accordingly, **Mr. H.K. Shekhar, Advocate (Mobile: 98107 67301)** is appointed as sole Arbitrator to adjudicate the dispute between the parties.

9. The arbitration shall be conducted under the Delhi International Arbitration Centre (DIAC). The Arbitrator shall ensure compliance of necessary disclosure under Section 12 (1) of the Arbitration and Conciliation Act, 1996 and not being ineligible under Section 12(5) of the Act before commencing the arbitration.

10. The fee of the Arbitrator shall be in accordance with the schedule of

fees prescribed under the Delhi International Arbitration Centre (DIAC) (Internal Management) Rules and Delhi International Arbitration Centre (Administrative Cost and Arbitrators' Fees) Rules, 2012.

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

12. A copy of this order be sent to the learned Arbitrator as well as Delhi International Arbitration Centre (DIAC) for information.

JULY 13, 2021
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(SURESH KUMAR KAIT)
JUDGE