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

% ***Date of decision: 21.09.2021***

+ **ARB.P. 928/2021 & I.A. 12322/2021**

M/S MAHESH EDIBLE OIL INDUSTRIES LIMITED

..... Petitioner

Through: Mr. Pradeep Kumar Sharma,
Advocate

Versus

IHQ OF MINISTRY OF DEFENCE (ARMY) Respondent

Through: Mr. Vikram Jetly, CGSC &
Mr. Srivats Kaushal, Advocate

CORAM:

HON'BLE MR. JUSTICE SURESH KUMAR KAIT

JUDGMENT (oral)

The hearing has been conducted through video conferencing.

1. The present petition has been filed by petitioner seeking appointment of a Sole Arbitrator under the provisions of Section 11(6) of the Arbitration and Conciliation Act, 1996 for adjudication of disputes with the respondent.
2. Petitioner is a company incorporated under the Companies Act, 1956, who is engaged in the business of manufacturing of mustard oil. Respondent is a Government organization under the Ministry of Defence, who invited

bids for supply of 20500 metric tonne (MT) edible oil vide proposal No.62801/Q/1/RPF/Edible oil/2020- 21/ APO/PUR-IV, dated 04/02/2020. The petitioner claims to have participated in the bid and submitted the requisite documents and EMD of Rs. 1,15,13,786/-. The bid of petitioner was accepted by the respondent vide its acceptance of tender letter dated 22.05.2020, reference No. 62801/20-21/RMO/APO/AT-5 to AT-13 as per the request for proposal dated 04/02/2020.

3. According to petitioner, due to Covid pandemic, lock down/curfew was imposed all over India from 25.03.2020 and due to lack of manpower and inability to procure oil seeds, the production in petitioner's factory stopped. After receipt of acceptance of tender vide letter dated 22.05.2020 from the respondent, petitioner vide letter dated 26.05.2020 drew respondent's attention to *force majeure clause* of the special condition of request for proposal dated 04/02/2020, which was denied by the respondent vide its communication dated 01.06.2020.

4. It is averred on behalf of petitioner that the requisite criteria laid down in clause VI of part of IV-A of request for proposal dated 04/02/2020, were fulfilled by the petitioner. However, vide letter dated 09.06.2020 and further letter dated 23.07.2020, respondent denied the claim of petitioner and

terminated the contract. Further, the respondent did not release the EMD amount of Rs.1,15,13,7861- to the petitioner, which petitioner is liable to receive under the *force majeure* clause.

5. The stand of petitioner is that Clause -16 of part-I & Clause -3 of part III of request for proposal dated 04/02/2020 contains the arbitration clause, according to which disputes, if any, shall be resolved through arbitration. It is also contended that the petitioner sent a compulsory 60 days' notice dated 22.05.2021 to respondent, but the respondent failed to nominate any Arbitrator and so, the said notice be treated as invocation of arbitration clause under the Arbitration and Conciliation Act, 1996.

6. During the course of hearing, Mr. Vikram Jetly, learned Central Government Standing Counsel appearing on behalf of respondent has submitted that the respondent has recommended a panel of three Arbitrators and disputes *inter se* parties can be referred to any of them for consideration.

7. After hearing learned counsel for the parties and upon perusal of material placed on record, this Court finds that existence of arbitration clause under Clause -16 of part-I & Clause -3 of part III of request for proposal dated 04/02/2020 is not disputed by learned counsel for respondent. However, the proposal for recommendation of a panel of three Arbitrators

on behalf of respondent cannot be accepted, as the Hon'ble Supreme Court in *Perkins Eastman Architects DPC & Anr. Vs. HSCC (India) Ltd. 2019 SCC Online SC 1517* has categorically stated that “*in cases where one party has a right to appoint a sole arbitrator, its choice will always have an element of exclusivity in determining or charting the course for dispute resolution. Naturally, the person who has an interest in the outcome or decision of the dispute must not have the power to appoint a sole arbitrator.*”

8. In view of aforementioned dictum of Hon'ble Supreme Court in *Perkins (Supra)*, this petition is allowed. Accordingly, **Mr. Amar Nath, District & Sessions Judge (retd.), Delhi (Mobile: 9958697030)** is appointed sole Arbitrator to adjudicate the dispute between the parties. The arbitration shall be conducted under the Delhi International Arbitration Centre (DIAC).

9. The fee of the Arbitrator shall be in accordance with the Schedule of Fees prescribed under the Delhi International Arbitration Centre (DIAC) (Administrative Cost and Arbitrators Fees) Rules, 2018.

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

11. A copy of this order be sent to the learned Arbitrator as well as Delhi

International Arbitration Centre (DIAC) for information.

12. With aforesaid directions, the present petition is accordingly allowed and disposed of as such. Pending application is disposed of as infructuous.

(SURESH KUMAR KAIT)
JUDGE

SEPTEMBER 21, 2021

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