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

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Date of decision: 26.11.2021

+ **ARB.P. 1137/2021 & IA No. 15443/2021**

VOLTAS LIMITED

..... Petitioner

Through: Ms. Neelam Rathore, Mr. Sanjay
Grover & Mr. Shival Singh,
Advocates

Versus

NCC LIMITED

..... Respondent

Through: Ms. Priya Kumar & Mr. Tejas
Chhabra, Advocates.

CORAM:

HON'BLE MR. JUSTICE SURESH KUMAR KAIT

J U D G M E N T (oral)

1. Petitioner- a company incorporated under the provisions of the Indian Companies Act, 1913, claims to be engaged in the execution of turnkey projects of heating, ventilation, air conditioning of entire buildings and large plants. Respondent a joint venture of M/s CRSSG-NCC(JV), was awarded construction and erection of a Medical College cum Hospital at Mandi, Himachal Pradesh, who had further awarded the work to petitioner vide letter of Intent dated 16.04.2010 for a fixed contract value of Rs. 21.90 crores, whereunder petitioner was responsible for the supply, erection and

commissioning of air conditioning equipment, in the five buildings, to be constructed by the respondent i.e. Hospital, Nursing College, Medical College, Administrative Block, and Utility Block, each having three to six floors. However, certain disputes arose between the parties during execution of the work and respondent invoked the bank guarantee to the tune of Rs.4.28 crores, followed by termination of work order on 01.07.2013. Thereafter, in a petition preferred by the petitioner, this Court vide order dated 30.08.2013 [in ARB.P. 284/2013] appointed an Arbitrator for adjudication of disputes between the parties.

2. Before commencement of arbitral proceedings, parties entered into Memorandum of Understanding (MoU) dated 18.09.2013 settling their differences, and agreeing to the resumption of the work on certain new terms and conditions. However, again certain disputes arose and petitioner filed petition under Section 11(5) of the Act [ARB. P. 292/2015] and vide order dated 13.08.2015, both the sides consented that the disputes may be referred to the Arbitrator already appointed by this Court vide order dated 30.08.2013 in ARB.P. 284/2013. The proceedings before the arbitral tribunal were at the stage of final hearing when due to Covid pandemic, the proceedings had to be deferred in January, 2020.

3. At the hearing, learned counsel appearing on behalf of petitioner has submitted that the parties were in communication with the learned Arbitrator through e-mail and on some occasions the arbitral proceedings were held further, however, some misunderstanding on the issue of fixing dates of hearings arose with the respondent herein and thereafter, the learned Arbitrator has recused himself and conveyed his inability to act as an Arbitrator.

4. At the hearing, learned counsel appearing on behalf of respondent has unequivocally accepted no grievance against the learned Arbitrator, however, has submitted that since the learned Arbitrator has recused himself from proceeding further in the matter, the present petition be allowed.

5. Accordingly, this petition is allowed and **Mr. Justice Pradeep Nandrajog (Retd.) (Mobile:981000130)** is appointed sole Arbitrator in this petition to adjudicate the dispute between the parties.

6. The arbitration shall be conducted under the Delhi International Arbitration Centre (DIAC). The fee of the learned Arbitrator shall be in accordance with the schedule of fees prescribed under the Delhi International Arbitration Centre (Administrative Cost and Arbitrators' Fees) Rules, 2018.

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

8. Needless to say that the learned Arbitrator shall proceed with the matter at the stage where proceedings were deferred.

9. The present petition is accordingly disposed of. Pending application also stands disposed of as infructuous.

10. A copy of this order be sent to the learned Arbitrator and DIAC for information.

NOVEMBER 26, 2021

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(SURESH KUMAR KAIT)
JUDGE