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

% ***Date of decision: 01.02.2022***

+ **ARB.P. 984/2021**

M/S MBL INFRASTRUCTURES LIMITED Petitioner

Through **Ms. Anusuya Salwan, Adv.**

versus

**PRADEEP COLONISERS AND SUPPLIERS PVT
LTD**

..... Respondent

Through **Mr. Nikhil Kohli, Mr. Gaurav Gupta
and Mr. Rahul Sinha, Adv.**

**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. The present petition has been filed under Section 11(6) of the Arbitration and Conciliation Act, 1996 seeking appointment of sole Arbitrator to adjudicate the disputes with respondent.
2. Petitioner-company, registered under the Companies Act, 1956, was awarded the work of restoration of Narayanpur Sub Distributary and Nawada Sub Distributary under Restoration Work of Western Gandak Canal System, Bihar (Saran Main Canal and its distribution system) (New Major ERN) from the Government of Bihar and a contract was executed between the respondent and the Executive Engineer Saran Canal Division, Gandak Project Marhowrah, Government of Bihar. Subsequently, petitioner



executed a Work Order No.02/101/5000/02035-I/2015/335 dated 25.08.2015 in favour of the respondent at Delhi as a "PRW" (Price Rate Worker) for the project of "Part Work of Restoration of Narayanpur Sub Distributary and Nawada Sub Distributary on piece rate basis for estimated value of Rs.48,95,98,859/- inclusive of taxes. Time for completion of the said contract was 18 months as per clause 21 of the work order from the date of commencement.

3. According to petitioner, respondent was paid mobilization advance of Rs.75 lakhs against furnishing of a corporate guarantee in favour of the petitioner and respondent had to execute the said work as per the specifications and stipulations of the work order. Respondent also was required to diligently adhere to the time prescribed and maintain the quality in the execution of the work order as specified in the work order.

4. Petitioner claims that constant delay on the part of the respondent in complying with the said work order, resulted in huge financial loss as well as loss of reputation and foreclosure of the contract of M/s MBL Infrastructures Ltd with Saran Canal Division, Gandak Project Morhowrah Govt. of Bihar. Further, respondent's poor and unsatisfactory performance in execution of the said work order led to forfeiture of performance guarantee. Thereby, petitioner was left with no option but to terminate the contract of the respondent vide letter dated 16.09.2017.

5. During the course of hearing, learned counsel for petitioner submitted that the respondent was provided with valuable plant and machinery for work at site which was to be returned back to the petitioner. However, after termination of the contract, without any information, the respondent started



removing the plant and machinery illegally without any permission or consent of the Petitioner. Intention of Respondent was to take possession of the same, unauthorizedly for which a complaint was lodged by the petitioner in the Amnor Police Station, Saran in order to take preventive and penal action against the respondent. Since disputes arose between the parties and the same have to be adjudicated by arbitration in terms of clause 24 of the contract signed between the parties, the petitioner served a notice dated 25.08.2021 on the respondent and proposed a panel of arbitrators and asked the respondent to choose any one arbitrator. However, respondent vide letter dated 22.09.2021 refused to consent to any of the three names of arbitrators suggested by the petitioner and so, petitioner was left with no option but to approach this Court for appointment of a sole arbitrator. Hence, the present petition has been filed.

6. Learned counsel appearing on behalf of respondent has disputed the claims raised in the present petition, however, fairly agreed that the disputes are arbitrable. Further, learned counsel has prayed that an independent Arbitrator be appointed by this Court for adjudication of dispute between the parties.

7. In view of the above, the present petition is allowed. Accordingly, **Ms. Justice (Retd.) R. Banumathi (Mobile: 7042955477)** is appointed sole Arbitrator to adjudicate the dispute between the parties.

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



NEUTRAL CITATION NO: 2022/DHC/000381

9. The learned Arbitrator shall ensure compliance of Section 12 of Arbitration and Conciliation Act, 1996 before commencing the arbitration.
10. The present petition stands disposed of accordingly.
11. A copy of this order be sent to the learned Arbitrator for information.

(SURESH KUMAR KAIT)
JUDGE

FEBRUARY 01, 2022
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