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

% ***Date of decision: 02.02.2022***

+ **ARB.P. 1176/2021**

OIL INDUSTRY DEVELOPMENT BOARD Petitioner

Through **Mr. K.R. Sasiprabhu and Mr. Tushar Bhardwaj, Advs.**

versus

GODREJ AND BOYCE MFG CO LTD Respondent

Through **Mr. Sumit Chander and Mr. Gurdeep Chauhan, Advs.**

CORAM:
HON'BLE MR. JUSTICE SURESH KUMAR KAIT

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

1. The present petition has been filed under Section 11 (4) (a) of the Arbitration and Conciliation Act, 1996 seeking appointment of sole Arbitrator to adjudicate the disputes with respondent.

2. Petitioner is a statutory body established under the Oil Industry Development Act, 1974. Respondent is company incorporated under the Companies Act. Petitioner claims to have invited bids for interior works (including internal electricals) for ground First, Second and Third Floor of G + 3 Block of the Oil Industry Development Board Office at Plot No.02, Sector 73, Noida. Respondent participated in the said bid and was successful

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in the same. Subsequently, petitioner vide its letter dated 04.06.2008 accepted the respondent's bid and in furtherance thereof, an Agreement/Contract dated 25.06.2008 was executed between the parties. As per the said Contract, respondent was required to coordinate and consult Engineers India Limited (EIL) for the proper execution of the project work. However, there were gross delays in the execution of the contractual work by the respondent due to which the petitioner had terminated the contract and encashed the bank guarantees to realise Liquidated Damages, which respondent was liable to pay to the petitioner in terms of the aforesaid Agreement/Contract.

3. According to petitioner, respondent thereafter raised a dispute under the Contract and in terms of clause 82.1 of the GCC sought settlement by way of arbitration. Respondent vide letters dated 17.03.2011 and 29.04.2011 requested the respondent for appointment of an Arbitrator. However, petitioner thereafter vide letter dated 18.05.2011 appointed the sole Arbitrator and the proceedings commenced. Also, respondent filed petition seeking appointment of Arbitrator before this Court being Arbitration Petition No.74 of 2011, however, the said petition was dismissed as infructuous vide Order dated 19.05.2011 passed by this Court. The learned



sole Arbitrator conducted the Arbitration Proceedings and passed the Award dated 25.06.2008. Nevertheless, the said Award was challenged by petitioner before this Court vide OMP No.601 of 2012 *inter alia* on the grounds that the learned sole Arbitrator had rejected the Counter Claims of the petitioner on the only ground that those were never claimed prior to the Arbitration Proceedings. The said OMP No.601/2012 was partially allowed by this Court vide judgement dated 16.09.2019 wherein it was observed as under:

“37. In view of the above, the Award insofar as it refuses to consider the counter-claim of the petitioner is set aside, leaving it open to the petitioner to agitate its claims in accordance with law.”

4. In terms of the liberty granted by this Court vide judgement dated 16.09.2019, petitioner sent a letter dated 26.02.2020 to the learned sole Arbitrator requesting to reconvene the proceedings and to decide its Counter Claims. Learned sole Arbitrator vide email dated 04.03.2020 consented to enter upon reference and decide counterclaims of OADB as in terms of the liberty granted by this Court. The first hearing through video conferencing was held on 24.06.2020, wherein respondent also agreed to continue the Arbitration and accordingly case was re-opened but due to ongoing



pandemic, further hearing could not be held. Now, the learned sole Arbitrator vide his email dated 7.10.2021 has expressed his inability to conduct the arbitration proceedings and rescued himself from arbitration. Hence, the present petition has been filed.

5. Learned counsel appearing on behalf of respondent has agreed to the appointment of substituted sole Arbitrator by this Court for adjudication of dispute between the parties.

6. In view of the above, the present petition is allowed. Accordingly, **Mr. Justice (Retd.) Indermeet Kaur (Mobile: 9910384614)** is appointed sole Arbitrator to adjudicate the dispute between the parties.

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

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

9. The present petition stands disposed of accordingly.

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

(SURESH KUMAR KAIT)
JUDGE

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