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

% *Date of Decision: 02nd August 2023*

+ O.M.P. (T) (COMM.) 53/2023

M/S RAKESH KUMAR AND CO. Petitioner
Through: Mr. Vivekanand, Mr. Abhishek
Semwal and Mr. Rashil Gandhi, Advocates.

versus

DELHI DEVELOPMENT AUTHORITY Respondent
Through: Ms. Aakanksha Kaul,
Mr. Aman Sahani, Mr. Digvijay Prasad and
Mr. Samarpit Chauhan, Advocates.

CORAM:
HON'BLE MS. JUSTICE JYOTI SINGH

JUDGEMENT

JYOTI SINGH, J. (ORAL)

1. Present petition has been filed under Sections 14 and 15 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as the '1996 Act') for revocation and termination of the mandate of Shri R.K. Aggarwal, appointed as arbitrator vide letter dated 02.11.2021.

2. Disputes between the parties pertain to a work contract awarded by the Respondent to the Petitioner with respect to 'D/o Main land at Hastsal area. SH: C/o 30 mtr. Road along Najafgarh drain connecting Hastsal DDA flats at PWD road no. 237 upto Najafgarh Road'. Pursuant to the letter of award, an agreement dated 02.11.2017 was executed between the parties governed by General Conditions of Contract and containing an arbitration agreement under clause 25 (ii)

of GCC.

Signature Not Verified

Signed By: KAMAL KUMAR O.M.P. (T) (COMM.) 53/2023

Signing Date: 08.08.2023
22:34:19



3. As disputes relating to the contract were not resolved amicably, Petitioner vide letter dated 26.12.2020 invoked the arbitration clause and requested the Competent Authority to appoint a sole Arbitrator. Sh. R.K. Aggarwal, Retd. Principal CE, Northern Railway was appointed as a sole Arbitrator, who entered upon reference on 13.11.2021 but carried on with the proceedings without a declaration in terms of Section 12(1) of the 1996 Act.

4. It is the case of the Petitioner that the hearings were concluded by the learned Arbitrator and case was reserved for passing of the award on 08.08.2022, with liberty to the parties to file written submissions within four weeks, however, till date the award has not been passed and the maximum period of one year and six months for making and publishing the award has expired on 12.05.2023. It is also stated that after reserving the case for award, Arbitrator has become incommunicado, save and except, asking the parties to consent to the extension of time by six months through a WhatsApp message on 28.05.2023.

5. Learned counsel for the Petitioner states that the appointment of the Arbitrator is *void ab initio* as no declaration was given under Section 12(5) of the 1996 Act. Learned Arbitrator is *de jure* incapable of acting having been unilaterally appointed by the Engineer Member, DDA and therefore his mandate deserves to be terminated. The Arbitrator has not acted expeditiously which is evident from the fact that no award has been rendered since 08.08.2022 and therefore it is even otherwise not in the interest of the Petitioner to continue with the Arbitrator and give consent for extension of time for making the award. It is also submitted that the Respondent has also refused to give



consent for extension of time and thus seen holistically the mandate of the present Arbitrator deserves to be terminated. It is thus prayed that a substitute Arbitrator be appointed by this Court.

6. Ms. Kaul, learned counsel appearing on behalf of the Respondent fairly and candidly submits that Respondent has no objection to the termination of the mandate of Sh. R.K. Aggarwal as Arbitrator and substitution by another Arbitrator.

7. I have heard the learned counsels for the parties. For the reasons stated in the petition, the following directions are issued:-

(a) Mandate of the sole Arbitrator Shri R.K. Aggarwal is hereby terminated;

(b) Justice Deepa Sharma, former Judge of this Court (Mob. No. 9910384631) is appointed as a sole Arbitrator to adjudicate disputes between the parties pertaining to and in respect of Agreement dated 02.11.2017;

(c) Learned Arbitrator is requested to furnish a declaration in terms of Section 12 of the 1996 Act, prior to entering upon reference;

(d) Fees of the learned Arbitrator shall be regulated in terms of the Fourth Schedule of the 1996 Act; and

(e) Time for passing of award is extended by a further period of one year from today.

8. Parties submit that the earlier Arbitrator had not recorded evidence and therefore liberty be granted to the parties to request the substitute Arbitrator to permit the parties to lead evidence and proceed further from that stage.



9. In view of the aforesaid, it is left open to the parties to request the substitute Arbitrator to proceed from the stage of completion of pleadings and/or record evidence and it would be open to the learned Arbitrator to take a decision, in accordance with law.

10. Needless to state that this Court has not expressed any opinion on the merits of the case and all rights and contentions of the parties are left open to be decided by the learned Arbitrator as per law.

11. Petition stands disposed of in the aforesaid terms.

JYOTI SINGH, J

AUGUST 02, 2023/shivam