



2024:DHC:2045



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
% ***Date of decision: 11th March, 2024***
+ **ARB.P. 104/2024**

CEMENT CORPORATION OF INDIA LTD Petitioner

Through: Mr. Purushottam Sharma Tripathi,
Mr. Amit & Mr. Abhishek Tripathi,
Advocates.

versus

MAHAVIR COAL WASHERIES PVT LTD. Respondent

Through: Mr. Vikram Sharma, Mr. Mahesh
Kumar & Mr. Nikhilesh Kumar,
Advocates.

CORAM:
HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

J U D G M E N T (oral)

1. The present Petition under Section 11 (6) of the Arbitration and Conciliation Act, 1996 (*hereinafter referred to as the "Act, 1996"*) has been filed on behalf of the petitioner seeking appointment of an independent Arbitrator to adjudicate the disputes having arisen between the parties in respect of the Agreement dated 11.10.2018.

2. It is submitted that the petitioner issued a Letter of Intent dated 10.10.2018 to rent out CCI Akaltara Siding Exchange Yard for one year. The petitioner acting through its Akaltara Cement Factory entered into an Agreement dated 11.10.2018 with the respondent for allowing the



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respondent to co-use the Akaltara Railway Siding Yard of the petitioner for a period of one year w.e.f. 11.10.2018 and further extendable by one year for loading of coal into Railway Wagons.

3. Pursuant to the Agreement dated 11.10.2018, the Work Order dated 15.10.2018 was issued in favour of the respondent for the period from 11.10.2018 to 10.10.2019, by a period of one year w.e.f. 11.10.2019 to 31.03.2020 for a period of one year *vide* Work Order dated 15.10.2018.

4. It is submitted that the respondent decided not to seek further extension of the ongoing Agreement under the Work Order beyond 31.03.2020.

5. It is further asserted that the respondent has admitted *vide* its Letters dated 23.01.2020 and 31.01.2020 that there is a due on the payment of Minimum Assured Revenue to the petitioner, as the respondent has failed to pay due to its severe financial crisis.

6. The petitioner *vide* its Notice dated 09.05.2023 sent to the respondent for forfeiture of EMD/SD on account of non-payment of rent for the months of January, February and March, 2020 and Railway dues.

7. The petitioner left with no option invoked Section 21 of the Act, 1996 read with Clause 16 (Arbitration Clause) of the Special Terms and Conditions to recover the outstanding dues, liquidated and un-liquidated damages and losses and proposed the appointment of Mr. Justice Kurian Joseph as the Sole Arbitrator.

8. The respondent *vide* its Reply dated 16.11.2023 stated that it would propose the name of the Sole Arbitrator in terms of Clause 16.1 of the Special Terms and Conditions of the Work Order dated 18.05.2018.

9. Therefore, the present petition has been filed on behalf of the



petitioner seeking appointment of an independent Arbitrator.

10. Learned counsel for the respondent submits that the respondent has no objection to the appointment of Arbitrator.

11. **Submissions heard.**

12. Clause 16 of the Agreement dated 11.10.2018 provides for resolution of disputes through arbitration.

13. In view of the submissions made and the petitioner has raised the arbitrable disputes and there is a valid Arbitration Clause between the parties, the present petition is allowed, Mr. Justice R.K. Gauba (Retd.), Mobile No. 9650411919, is hereby appointed as the Sole Arbitrator to adjudicate the disputes between the parties.

14. The parties are at liberty to raise their respective objections before the Arbitrator.

15. The fees of the learned Arbitrator would be fixed in accordance with the Schedule-IV of the Act, 1996 or as consented by the parties.

16. This is subject to the Arbitrator making necessary disclosure as under Section 12(1) of the Act, 1996 and not being ineligible under Section 12(5) of the Act, 1996.

17. Learned counsels for the parties are directed to contact the learned Arbitrator within one week of being communicated a copy of this Order to them by the Registry of this Court.

18. Accordingly, the present petition is disposed of in the above terms.

(NEENA BANSAL KRISHNA)
JUDGE

MARCH 11, 2024
S.Sharma