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

+ **O.M.P.(MISC.)(COMM.) 206/2024**

ADAVYA PROJECTS PVT. LTD.

..... Petitioner

Through: Ms. Simran Brar, Ms. Kiran Devrani,
and Mr. Nitish Dham, Advs. (M:
9318349265)

versus

M/S VISHAL STRUCTURALS PVT. LTD & ORS..... Respondents

Through: Mr Susheel J. Cyriac, Mr. Navdeep
Dhaiya & Mr. Varun Kanwal, Advs.
(M: 6397835550)

CORAM:

JUSTICE PRATHIBA M. SINGH

ORDER

% **03.05.2024**

1. This hearing has been done through hybrid mode.
2. This petition under Section 29A of the Arbitration and Conciliation Act, 1996 (hereinafter, '*the Act*') has been filed by Adavya Projects Pvt. Ltd. seeking extension of the mandate of the Id. Sole Arbitrator.
3. In the present petition, disputes primarily arise out of the Limited Liability Partnership Agreement dated 1st June, 2012. The arbitral tribunal was constituted vide order dated 24th November, 2021 in **Arb.P. 78/2021**, and thereafter, the arbitral tribunal entered reference on 22nd December, 2021. In the proceedings before the said tribunal, vide order dated 27th February, 2024, pleadings are stated to be completed. However, the mandate of the Id. Sole Arbitrator expired 28th February, 2024. Hence, the present petition has been filed.



4. Notice was issued in this matter on 19th March, 2024.
5. Vide order dated 28th March, 2024, it was recorded as under:

“4. Ld. Counsel for the Respondent has no objection if the extension is granted to the mandate of the Id. Arbitrator. However, Id. Counsel for the Petitioner, however, highlights that Respondent has not paid any part of the fee of the arbitral proceedings and even the Fourth Schedule of the 1996 Act is not being applied for the arbitral proceedings.”

An adjournment was sought on the said date by the Counsel for Respondent.

6. Today, Id. Counsel has produced before the Court minutes of proceedings dated 2nd May, 2024 wherein the following order has been passed by the Id. Arbitrator:

“The Claimant has sent the link for hearing only few minutes before the appointed time of hearing. The Respondents may not have received the link and as such have not entered appearance.

Hard copies of the affidavits etc. have not been filed.

Ld. Counsel for the Claimant submits that some other date of hearing may be fixed as their application is coming up before the High Court tomorrow.

The matter is adjourned to 23rd of May, 2024, at 05:00 pm, awaiting the directions of the Hon'ble High Court.

The proceedings in this matter have been delayed by the Claimant itself on account of its various defaults.

The undersigned would be happy if some other Arbitrator is appointed by the Hon'ble High Court.

The aforesaid hearing would be a Virtual hearing.



The Claimant to arrange Virtual hearing through Zoom/Web-Ex Platform and send the link to all concerned well in time.”

7. Ld. Counsel for the Petitioner submits that a sum of Rs.18 lakhs has already been paid to the Ld. Arbitrator as fee. Moreover, the matter has not proceeded further beyond the decision in the application under Section 16. The list of dates would also show that the reference was made on 22nd December, 2021 and for various reasons, only the application under Section 16 has been decided and issues are yet to be framed in the arbitral proceedings.

8. Ld. Counsel for the Petitioner also submits that a sum of Rs. 18 lakhs has been deposited with the Arbitrator and the said fee would be contrary to what is prescribed under the Fourth Schedule of the Act. She also submits that the Respondent has not paid any fee.

9. The Respondent had filed a counter claim. The same is stated to have been rejected at the initial stage itself. No part of the fee has been borne by the Respondent.

10. In these circumstances, while the mandate of the tribunal has to be extended, the Court also is of the opinion that, a new Arbitrator can be appointed. The consent of the current Id. Arbitrator for the same, is also clear from the order which has been passed on 2nd May, 2024 where the Id. Arbitrator has expressed his consent for a new Arbitrator being appointed.

11. Exercising powers under Section 29(A)(6), a fresh appointment is made of a sole Arbitrator in the matter.

12. As per the Fourth Schedule the following amount would have been the maximum amount which would have been payable i.e., sum of Rs. 9,93,120/-.



13. Considering that a substantial amount has been paid to the Id. Arbitrator and the matter also had not even reached at the stage of framing of issues, applying the Fourth Schedule of the Act and leaving some amount for expenses which the Arbitrator would have incurred, the Id. Arbitrator is directed to refund a sum of Rs.8 lakhs to the Petitioner. The present reference to a new arbitral tribunal with respect to Respondent nos. 2 and 3 shall be subject to the decision in the **ARB. A. (COMM.) 24/2024** titled ***Adavya Projects Pvt. Ltd. v. M/S Vishal Structural Pvt. Ltd & Ors*** wherein a challenge has been raised to their deletion by the Ld. Arbitrator.

14. Accordingly, **Justice Asha Menon – Retd (9910384664)** is appointed as a Id. Sole Arbitrator to adjudicate the disputes. All the contentions on merits are kept open to be adjudicated in the arbitration proceedings. The Id. Arbitrator shall proceed from the stage where the earlier arbitrator had left the matter. Considering the delays that have occurred, the Id. Arbitrator is requested to expedite the final adjudication of the matter.

15. The Arbitration proceedings shall take place under the aegis of the Delhi International Arbitration Centre (hereinafter, ‘DIAC’). The arbitration proceedings shall be conducted under the Rules of DIAC. The fee of the Id. Sole Arbitrator shall be as per the Fourth Schedule of the Arbitration and Conciliation Act, 1996, as amended by the DIAC Rules, 2023.

16. Insofar as Respondent Nos. 2 and 3 are concerned, their impleadment shall be subject to the decision in **ARB. A. (COMM.) 24/2024**. The proceedings in respect of Respondent No.1 shall continue before the arbitral tribunal.

17. List before the DIAC on 24th May, 2024. Let a copy of the present order be emailed to Secretary, DIAC on the email id-



delhiarbitrationcentre@gmail.com.

18. Petition is disposed of with all pending applications, if any.

PRATHIBA M. SINGH, J.

MAY 3, 2024

dj/bh