



2024:DHC:6431



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**+ **O.M.P. (T) (COMM.) 41/2024, I.A. 10015/2024****MILLENNIUM CONSTRUCTION PVT. LTD.Petitioner**

Through: Mr. Pavan Narang, Mr. Abhay Singh, Ms. Ankita Agarwal, Ms. Aishwarya Chabra and Mr. Himanshu Sethi, Advs.

versus

**FOOTWEAR DESIGN AND DEVELOPMENT
INSTITUTE**

.....Respondent

Through:

CORAM:**HON'BLE MR. JUSTICE C. HARI SHANKAR****ORDER (ORAL)****22.08.2024**

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I.A. 10015/2024

1. Exemption allowed subject to all just exceptions.
2. Applications are disposed of.

O.M.P. (T) (COMM.) 41/2024

3. This is a petition under Section 14(2) of the Arbitration and Conciliation Act, 1996 ("the 1996 Act") and seeks termination of the mandate of the arbitrator appointed by the respondent by way of a communication dated 28 February 2024.

4. The arbitration clause governing the contract between the parties read thus:



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“69. **ARBITRATION** :

Except where otherwise provided for in the Contract all questions and disputes relating to the meaning of the specifications, designs, drawings and instructions herein before mentioned and as to the quality of workmanship or materials used on the work or as to any other question, claim, right, matter or thing whatsoever is any way arising out of or relating to the Contract, designs drawings, specifications, estimates, instructions, orders or these Conditions or otherwise concerning the works or the execution or failure to execute the same whether arising during the progress of the work or after the completion or abandonment thereof shall be referred to the sole arbitration of the General Manager FDDI, FDDI, and if the General Manager is unable or unwilling to act to the sole arbitration of some other person appointed by the Managing Director. FDDI willing to act as such arbitrator. There will be no objection if the arbitrator so appointed is an employee of FDDI, and that he had to deal with the matters to which the Contract relates and that in the course of his duties as such he had expressed views on all or any of the mailers in dispute or difference. The arbitrator to whom the matter is originally referred being transferred or vacating his office or being unable to act for any reason as aforesaid at the time of such transfer, vacation of office or inability to act. Managing Director, FDDI, shall appoint another person to act as arbitrator in accordance with the terms of the Contract. It also a term of this Contract that no person other than a person appointed by MD, FDDI, as aforesaid should act as arbitrator and if for any reason, that is not possible, the matter is not to be referred to arbitration at all.

The above shall accept otherwise stipulated apply to Contracts whose value does not exceed Rs. Fifty lakhs. For Contract value exceeding Rs. fifty lakhs in the event of any differences/disputes which cannot be resolved amicably. The aggrieved party as Claimant shall serve a notice of his/their disagreement/dispute having arisen on the opposite party (respondent) calling upon the latter to nominate his/their nominee as arbitrator within one month of the date of such notice and that in the event of failure in nominating arbitrator by the Respondent within 30 days of the Notice by the Claimant, the arbitrator nominated by the Claimant shall become the Sole Arbitrator. Where, however, if both the party nominates one arbitrator each i.e. Contractor nominates one person to act as arbitrator and FDDI, nominates one arbitrator. As required under Indian Arbitration Act 1940 both the arbitrators shall appoint umpire, before entering into the reference of disagreement/disputes before the two arbitrators enter into the reference.”

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Digitally Signed

By: AJIT KUMAR OMP (T) (COMM.) 41/2024

Signing

Date: 26.08.2024 22:44

Signature Not Verified

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By: CHANDRASHEKHAR AN HARI SHANKAR

Signing Date: 26.08.2024

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5. On 28 February 2024, the respondent addressed a notice to the petitioner under Section 21 of the 1996 Act, invoking Clause 69 of the tender conditions. The petitioner is apprehensive on account of paragraph (xiv) of the said notice which reads thus:

“(xiv) Accordingly, FDDI nominated the below-named person to be appointed as its nominee to the Arbitration Tribunal to be constituted in terms of the Agreement. FDDI calls upon PDL to intimate FDDI the name of its nominee to act as the Arbitrator to the Tribunal within 30 days, failing which the nominee appointed by FDDI shall proceed with the Arbitration by acting as the Sole Arbitrator.”

6. The petitioner responded to the aforesaid notice, contesting the prayer for reference of the dispute for arbitration.

7. Ordinarily, in such an eventuality, one or the other party would have to approach the Court under Section 11(6) of the 1996 Act, for an arbitrator to be appointed.

8. Neither of the parties has approached under Section 11(6). Mr. Pavan Narang, learned Counsel for the petitioner submits that the petitioner is apprehensive on account of the concluding observation in paragraph (xiv) of the notice dated 28 February 2024, which states that, in the event of the petitioner not having intimated the name of its own nominee to act as the arbitrator, the nominee appointed by the respondent would proceed with the arbitration.

9. Mr. Narang submits that the petitioner, therefore, apprehends that the arbitration may continue unilaterally.

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10. According to me, this apprehension is premature at this stage. The respondent, in its notice dated 28 February 2024, has merely named an arbitrator and called upon the petitioner to suggest any alternative name if he so chooses. The petitioner has not done so. No arbitrator named in the communication dated 28 February 2024 has entered on reference as yet.

11. There is no reason for the court to expect that the arbitrator would enter on reference following a unilateral appointment.

12. In case such an eventuality arises, however, the petitioner would be at liberty to approach this Court.

13. With the above observation, this petition is disposed of.

C.HARI SHANKAR, J

AUGUST 22, 2024/aky

Click here to check corrigendum, if any

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