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

+ **O.M.P. (T) (COMM.) 70/2023**

MBL INFRASTRUCTURE LIMITED

..... Petitioner

Through: Ms Anusuya Salwan, Mr Rachit
Wadhwa and Ms Simran Sakunia,
Advs.

versus

BITES LTD AND ANR

..... Respondents

Through: Mr G.S. Chaturvedi and Mr Virat
Singh, Advs. for BITES Ltd.
Ms Mehak Nakra, ASC (Civil)
GNCTD with Mr Abhishek Khari and
Ms Aditi Kapoor, Advs. for R-2.

CORAM:

HON'BLE MR. JUSTICE JASMEET SINGH

ORDER

12.03.2024

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1. This is a petition under Section 14 and 15 of the Arbitration and Conciliation Act, 1996 seeking termination of the mandate of the Sole Arbitrator, Mr Ashok Kumar Purwaha and appoint an independent Arbitrator to adjudicate the disputes between the parties.
2. The facts in brief are that the respondent No.1 as an agent of respondent No. 2 / Delhi Police on 14.12.2011 invited tenders for "Construction of Police Line and Residential Quarters at Kondli Check Post" in a two bid system.
3. The bid of the petitioner was accepted and an Agreement dated 05.07.2012 was executed between the petitioner and respondent No.1 as an



agent of respondent No.2.

4. Since disputes arose between the parties, the petitioner filed petition under section 9 of the Arbitration and Conciliation Act, 1996 being OMP(I)(COMM) No. 440/2017.

5. Thee petitioner vide letter dated 24.11.2017 invoked arbitration and requested the respondent to appoint an arbitrator in terms of the arbitration clause between the parties.

6. Since the respondent refused to do so on the ground that only RITES Ltd./respondent no. 1 can appoint in terms of the clause 25, the petitioner on 08.01.2018 filed a petition under Section 11 of the Arbitration and Conciliation Act, 1996 seeking appointment of an Arbitrator.

7. On 23.01.2018, this court was pleased to appoint Mr Ashok Kumar Purwaha as the Sole Arbitrator (one of the three names suggested by the respondent).

8. On 29.12.2020, the respondent No.1 filed 23rd RA and Final bill of the petitioner reducing the amount to Rs. 4,34,12,519/-. The petitioner within a week filed an application for amendment of the Final Bill and thereafter also filed an amended statement of claims.

9. The Arbitral Tribunal on 09.03.2021 reserved the order on the amendment application filed by the petitioner.

10. On 08.01.2022, the Arbitral Tribunal rejected the amendment application.

11. The mandate of the Sole Arbitrator expired on 01.01.2023.

12. The petitioner challenged the order dated 08.01.2022 rejecting the amendment application of the petitioner by filing OMP(COMM) No. 98/2022 titled '*MBL Infrastructures Ltd. v. RITES Limited and Anr.*' The



said OMP filed by the petitioner was dismissed.

13. On 14.10.2022, the petitioner challenged the said order by filing appeal under Section 37(1)(C) of the Arbitration & Conciliation Act, 1996 being FAO(OS)(COMM) 328/2022.

14. The Hon'ble Division Bench vide order dated 01.05.2023 set aside the judgment dated 14.10.2022 and directed the amended Statement of Claim to be taken on record by the Arbitral Tribunal subject to costs of Rs. 50,000/- to be paid by the petitioner to respondent. As per Ms Salwan, learned counsel the petitioner has paid the costs.

15. A perusal of the order FAO(OS)(COMM) 328/2022 clearly shows that the Hon'ble Division Bench has observed as under:

“17. There is another aspect which requires to be highlighted. Admittedly, the Arbitral Tribunal reserved Judgment on this Amendment Application for almost a period of one year prior to rejecting the Amendment Application inter-alia on the ground of delay. During the period, orders on the Amendment Application were reserved, the Arbitral Tribunal preceded further in the Arbitral proceedings without any decision on the Amendment Application. In doing this, the Arbitral Tribunal also delayed the final adjudication of the additional claims/counter-claims of the parties.”

16. Section 14(1) (a) and (b) of the Arbitration & Conciliation Act, 1996 reads as under:

“14. Failure or impossibility to act.—(1) [The mandate of an arbitrator shall terminate and he shall be substituted by another arbitrator, if]—



(a) he becomes de jure or de facto unable to perform his functions or for other reasons fails to act without undue delay; and

(b) he withdraws from his office or the parties agree to the termination of his mandate.

...”

17. A perusal of the aforesaid section shows that the mandate of the Arbitrator shall terminate/come to an end if he fails to act without undue delay.

18. The Hon’ble Division Bench in its judgment has categorically found that the Arbitral Tribunal has delayed the final adjudication of the additional claims and counter claims of the parties.

19. The judgment passed by the Hon’ble Division Bench has not been challenged by any of the parties and hence the finding that the Arbitral Tribunal has delayed the adjudication has attained finality.

20. Admittedly, none of the parties have taken any proceedings under Section 29-A.

21. For the said reasons, the petition is allowed and the mandate of the Arbitrator is hereby terminated.

22. Since the parties are still having disputes between them, the following directions are issued:-

- i) Justice Najmi Waziri (Retd.) (Mob. No. 9810097311) is appointed as a Sole Arbitrator to adjudicate the disputes between the parties.
- ii) The arbitration will be held under the aegis of the Delhi International Arbitration Centre, Delhi High Court, Sher Shah



Road, New Delhi hereinafter, referred to as the ‘DIAC’). The remuneration of the learned Arbitrator shall be in terms of the Fourth Schedule of the Arbitration & Conciliation Act, 1996.

- iii) The learned Arbitrator is requested to furnish a declaration in terms of Section 12 of the Act prior to entering into the reference.
 - iv) It is made clear that all the rights and contentions of the parties, including as to the arbitrability of any of the claim, any other preliminary objection, as well as claims on merits of the dispute of either of the parties, are left open for adjudication by the learned arbitrator.
 - v) The parties shall approach the learned Arbitrator within two weeks from today.
 - vi) The substitute Arbitrator shall commence proceedings from the stage where the mandate had terminated.
23. The petition is allowed and disposed of in the aforesaid terms.

JASMEET SINGH, J

MARCH 12, 2024

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[Click here to check corrigendum, if any](#)