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

+ **ARB.P. 758/2024**

OMAT BUSINESS PRIVATE LIMITED

..... Petitioner

Through: Mr. Tanmaya Mehta, Mr. Sanyam
Khetarpal and Ms. Lekha, Advocates.

versus

YOGI FOILS PRIVATE LIMITED & ORS.

..... Respondents

Through: Mr. Umang Mehta, Advocate *via*
video-conferencing.

CORAM:

HON'BLE MR. JUSTICE ANUP JAIRAM BHAMBHANI

ORDER

27.05.2024

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I.A. 30407/2024 (exemption)

Exemption granted, subject to just exceptions.

Let requisite compliances be made within 01 week.

Application stands disposed-of.

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Though Practice Directions dated 20.05.2024 issued by this court have not been complied with, considering the position in the matter and the order that this court proposes to pass, it is not considered necessary to direct the petitioner to comply with those directions.

2. By way of the present petition under section 11 of the Arbitration & Conciliation Act 1996 ('A&C Act'), the petitioner seeks appointment of an Arbitral Tribunal consisting of 03 arbitrators to adjudicate upon



the disputes that are stated to have arisen with the respondents from Asset Transfer Agreement dated 02.08.2022 ('Agreement').

3. Mr. Tanmaya Mehta, learned counsel appearing for the petitioner submits, that the arbitration agreement comprised in clause 13.8 of the Agreement contemplates the appointment of an Arbitral Tribunal comprising 03 arbitrators, 01 to be appointed by each side; and the 02 party-appointed arbitrators to appoint the third arbitrator to act as Chairman/Presiding Arbitrator.
4. Mr. Mehta further points-out that as per clause 13.8.2 of the Agreement, parties have agreed that the 'seat' and 'venue' of arbitration is to be at New Delhi.
5. From the record, it is seen that the petitioner had issued invocation notice dated 13.02.2024 to the respondents, in which they had nominated Hon'ble Mr. Justice Sunil Gaur, former Judge of this court as their nominee Arbitrator. In response to that notice, *vide* a reply dated 17.03.2024 the respondents had nominated Hon'ble Mr. Justice K.K. Lahoti, former Acting Chief Justice of the Madhya Pradesh High Court, as their nominee on the Arbitral Tribunal.
6. Issue notice.
7. Mr. Umang Mehta, learned counsel appears on behalf of the respondents on advance copy; accepts notice; and submits that the petition is premature inasmuch as Hon'ble Mr. Justice K.K. Lahoti has already sent a panel of names to Hon'ble Mr. Justice Sunil Gaur, to decide the Presiding Arbitrator.
8. Mr. Mehta however submits, that the timeline for sending the panel of names to choose the Presiding Arbitrator was 30 days, which time has



run-out; and that the agreed arbitral procedure contemplates that after expiry of that time period the petitioner should file the present petition to seek appointment through court.

9. Be that as it may, it now transpires that both parties are agreeable that Hon'ble Mr. Justice L. Nageswara Rao, former Judge of the Supreme Court be nominated as the Presiding Arbitrator on the Arbitral Tribunal.
10. In the circumstances, without awaiting any further proceedings, **Hon'ble Mr. Justice L. Nageswara Rao, former Judge of the Supreme Court (Cellphone No.: +91 9560003598, 9810035984)** is appointed as the Presiding Arbitrator, thereby completing the constitution of the Arbitral Tribunal.
11. The learned Arbitral Tribunal would furnish to the parties requisite disclosures as required under section 12 of the A&C Act; and in the event there is any impediment to the appointment on that count, the parties are given liberty to file an appropriate application in this court.
12. The learned Arbitral Tribunal shall be entitled to fee in accordance with Fourth Schedule to the A&C Act; or as may otherwise be agreed to between the parties and the learned Arbitral Tribunal.
13. Parties shall share the arbitrators' fee and arbitral costs, equally.
14. All rights and contentions of the parties in relation to the claims/counter-claims are kept open, to be decided by the learned Arbitral Tribunal on their merits, in accordance with law.
15. Parties are directed to approach the learned Arbitral Tribunal appointed within 02 weeks.



16. A copy of this order be communicated by the Registry *via* e-mail to the learned Arbitral Tribunal, as also to learned counsel for the parties.
17. The petition stands disposed-of in the above terms.
18. Other pending applications, if any, also stand disposed-of.

ANUP JAIRAM BHAMBHANI, J

MAY 27, 2024

V.Rawat