



2024:DHC:5222



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**+ **O.M.P. (T) (COMM.) 82/2023****INDEEN BIO POWER LTD**

.....Petitioner

Through: Mr. J. Sai Deepak, Mr.
Navdeep Dahiya and Mr. Karandeep
Dahiya, Advocates

versus

EFS FACILITIES SERVICES INDIA PVT LTD

.....Respondent

Through: Mr. Dayan Krishnan, Sr.
Advocate with Mr. Vasanth Rajasekaran,
Mr. Sukrit Seth and Mr. Harshvardhan
Korada, Advocates

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

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12.07.2024

1. This petition appears to emanate from para 61 of the judgment rendered by this Bench on 4 January 2021 in OMP (COMM) 440/2020. The said passage reads thus:

“61. As a result of the above discussion, the impugned Award, passed by the learned Arbitral Tribunal, cannot be sustained and is, accordingly, quashed and set aside. It would be open to Indeen to re-agitate its claims before the learned Arbitral Tribunal. In case the matter is re-agitated, the learned Arbitral Tribunal would reconsider the claims of Indeen, in accordance with law, keeping in view the observations made hereinabove.”

2. This judgment was carried in appeal to the Division Bench by way of FAO (OS) (COMM) 14/2021, which was dismissed by judgment dated 7 July 2023.



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3. Pursuant to the aforesaid judgment of the Division Bench, it appears that the petitioner had approached Hon'ble Mr. Justice Anil Dev Singh (Retd.), who was learned **the** arbitrator earlier dealing with the matter but that Anil Dev Singh J expressed his inability to re-arbitrate the issue by e-mail dated 5 August 2023.

4. In this situation, this petition has been preferred under Section 15¹ of the Arbitration and Conciliation Act, 1996² (1996 Act) for appointing a fresh Arbitrator to arbitrate on the controversy.

5. Though Mr. Dayan Krishnan, learned Senior Counsel for the respondent, has debated the applicability of Section 15 of the 1996 Act, *inter alia*, and raised other contentions as well, the Court is glad to record that both sides are ultimately agreeable to this petition being disposed of in the following terms:

(i) The dispute would now stand reconsidered, in accordance with para 61 of the judgment dated 4 January 2021 of this Court in OMP (Comm) 440/2020, by Hon'ble Mr. Justice Adarsh Kumar Goel (Mob: 9910213040), a learned retired judge of the Supreme Court of India.

(ii) No fresh claims/counter-claims shall be permitted to be

¹ 15. **Termination of mandate and substitution of arbitrator.** –

(1) In addition to the circumstances referred to in Section 13 or Section 14, the mandate of an arbitrator shall terminate—

(a) where he withdraws from office for any reason; or
(b) by or pursuant to agreement of the parties.

(2) Where the mandate of an arbitrator terminates, a substitute arbitrator shall be appointed according to the rules that were applicable to the appointment of the arbitrator being replaced.



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raised before the learned Arbitral Tribunal.

(iii) No fresh evidence shall be permitted to be led by either side.

(iv) No fresh pleadings shall be permitted by either side.

(v) In other words, the learned Arbitral Tribunal shall deal with the disputes on “as is where is” basis.

(vi) However, the learned Arbitral Tribunal shall keep in mind the observations contained in the judgment dated 4 January 2021 in OMP (Comm) 440/2020, in terms of para 61 of the judgment.

6. The fees of the learned Arbitrator shall be fixed in consultation with the parties.

7. The petition stands disposed of in the aforesaid terms.

C. HARI SHANKAR, J.

JULY 12, 2024/yg

Click here to check corrigendum, if any

² “the 1996 Act” hereinafter