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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **O.M.P. (T) (COMM.) 103/2023**
DTE GEN MD ACCN. PROJECT

..... Petitioner

Through: Mr. Apoorv Kurup and Mr. Neeraj,
Advvs.

versus

UNITED CONSTRUCTIONS & ANR.

..... Respondent

Through: Mr. M. Tarique Siddiqui, Mr. Fajallu
Rehman and Ms. Lakshmi, Advvs.

CORAM:
HON'BLE MR. JUSTICE JASMEET SINGH

ORDER

06.02.2024

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I.A. 21999/2023

1. Exemption is granted subject to all just exceptions.
2. The petitioner shall file legible and clearer copies of exempted documents, compliant with practice rules before the next date of hearing.
3. The application is disposed of.

O.M.P. (T) (COMM.) 103/2023

1. This is a petition under Section 14(I)(a) of the Arbitration and Conciliation Act, 1996 seeking termination of the mandate of the learned Arbitrator.
2. It is stated by Mr. Kurup, learned CGSC for the petitioner that this court on 09.01.2023 in Arb.P. 1100/2022 appointed an Arbitrator and directed payment fees of the learned arbitrator as per the fourth schedule.
3. It is stated by Mr. Kurup, learned counsel for the petitioner that the fees of the arbitration should be decided by the Empanelment Letter dated 07.02.2023 issued by the Ministry of Defence. The Fees Schedule for Arbitration Tribunal under the said letter reads as under:-



<i>Sum in Dispute</i>	<i>Fee Structure</i>
<i>Upto Rs. 5,00,000.00</i>	<i>Rs. 45,000.00</i>
<i>Above Rs. 5,00,000.00 and upto Rs. 20,00,000.00</i>	<i>Rs. 45,000.00 plus 2 percent of the claim amount over and above Rs. 5,00,000.00</i>
<i>Above Rs. 20,00,000.00 and upto Rs. 1,00,00,000.00</i>	<i>Rs. 75,000.00 plus 1.5 percent of the claim amount over and above Rs. 20,00,000.00</i>
<i>Above Rs. 1,00,00,000.00</i>	<i>Rs. 1,95,000.00 plus 0.50 percent of the claim amount over and above Rs. 1,00,00,000.00 subject to maximum ceiling of Rs. 5,00,000.00</i>
<i>Note :- In the event, the Arbitral Tribunal is consisting of a Sole Arbitrator, he/she shall be entitled to an additional amount of Twenty Five percent on the fee payable as per the table set out above. Maximum ceiling shall also be enhanced accordingly.</i>	

4. It is stated by the learned counsel for the petitioner that the arbitrator having accepted the above terms cannot now seek fees under the Fourth Schedule.

5. The order dated 09.01.2023 was passed in the presence of the counsels for the petitioner. The counsels for the petitioner gave no objection to Major General K. Gajria being appointed as the arbitrator and the fees of the learned arbitrator was directed to be fixed as per the fourth schedule of the Arbitration and Conciliation Act, 1996.

6. Thereafter, the petitioner filed an application being I.A. 11868/2023 seeking modification of the order dated 09.01.2023 on the grounds that the arbitrator should be paid fees as per schedule mentioned in the letter dated 07.02.2023. The said application was withdrawn by the petitioner on 24.08.2023.



7. Thereafter, the petitioner moved another application vide letter dated 14.02.2023 before the learned arbitrator seeking determination of the arbitral fees as per the fee schedule prescribed in the empanelment letter.

8. The learned arbitrator by email dated 07.05.2023 ordered that payment of fees will be done as per the fourth schedule. The order of the learned Arbitrator reads as under:

“ORDER

Hearing was held on 03 April 23 as scheduled. Both parties were present

Claimant Sh Gopal Rajani, counsel Sh Tariq Siddique, Sh N K Rajpal and Respondent : Dir Contracts DG MAPS, Counsel Sh Vijay Sharma

1) Both parties were ordered that the Arbitral Fees would be paid as per Schedule IV as per the Court Order

2) The Claimant was to submit his Claims which he has since submitted on 10 April

3) The Respondent was given time till one month after the submission of Claims to file his SOD. This expires on 10 May 23

4) Both parties agreed that a date can be fixed between Monday to Friday at 1600 hrs since the Respondent's working days are from Monday to Friday.

5) The Next date of hearing is fixed in virtual mode on 11 May 2023 at 1600 Hrs. Claimant will organise the link.

6) Both Parties will take a print out of this order as hard copy for their records

Maj Gen KT Gajria (Retd)

Sole Arbitrator”

9. Hence, the present petition under Section 14 (1)(a).

10. Section 14(1)(a) of the Arbitration and 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”

11. In the present case, the arbitrator has neither become *de-jure* nor *de-facto* unable to perform his functions.

12. The arbitrator has been ready and willing to perform his functions in accordance with the mandate of the order dated 09.01.2023.

13. It is the petitioner who should have been pointed out the fee schedule under the empanelment letter when the hearing took place on 09.01.2023. Having failed to do so and having accepted payment of fees to the arbitrator as per the fourth schedule under the Arbitration and Conciliation Act, 1996, the petitioner cannot maintain the present petition under section 14 (1)(a).

14. For the said reasons and since the arbitrator is ready and willing to perform his functions and act according to the mandate of the order dated 09.01.2023, there is no merits in the petition and the same is dismissed.

15. This order is being passed in the peculiar facts of this case.

JASMEET SINGH, J

FEBRUARY 6, 2024/NG