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

+ **ARB.P. 1276/2023, I.A. 24137/2023, I.A. 24138/2023**

TATA CHEMICALS LTD

..... Petitioner

Through: None.

versus

SRI KRISHNA FERTILIZERS & ANR.

..... Respondents

Through: Mr. Abinash Kumar Mishra and Mr.
Amaresh Kumar Singh, Advocates.

CORAM:

HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

ORDER

20.02.2024

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1. An application under Section 11(5) and 11(6) of the Arbitration & conciliation Act, 1996 has been filed on behalf of the applicant seeking appointment of an Arbitrator to decide the disputes and differences between the parties.

2. It is submitted in the application that the arbitral proceedings in the present case in respect of Agreement dated 01.04.2015 was commenced by the learned Sole Arbitrator who was appointed vide Letter dated 05.12.2017. An Arbitral Award dated 20.05.2019 in Claim Petition No.GT/01/2018 was made by the learned Sole Arbitrator, but the objections under Section 34 Arbitration & Conciliation Act was filed by the respondent and the same were allowed and the Arbitral Award was set aside giving a liberty to the applicant to commence the arbitral proceedings after the appointment of Sole Arbitrator afresh vide Order dated 06.10.2023. Now, Section 12(5) of the Arbitration & Conciliation Act, 1996 has been inserted prohibiting the



unilateral appointment of the Arbitrator.

3. In the light of the liberty granted vide Order dated 06.07.2023, the petitioner issued a Legal Notice cum Invocation Letter dated 27.07.2023 under Section 11(5) of the Act detailing the disputes that had arisen between the parties and sought appointment of the Arbitrator. The names of two retired District Judges were suggested but the respondent did not reply to the said Notice or give consent to the name of any of the suggested Sole Arbitrator. Hence, the present application has been filed for appointment of the Arbitrator.

4. Learned counsel on behalf of the respondent has taken three objections namely:

- (i) non-execution of the Contract which contains the arbitration Clause;
- (ii) claims being barred by limitation; and
- (iii) the proceedings and record on which reliance has been placed by the petitioner are false forged and fabricated documents and that these issues cannot be decided by the learned Sole Arbitrator.

5. Considering that the earlier arbitration proceedings had been undertaken in which an Award dated 20.05.2019 had been passed and it was set aside vide Order dated 06.10.2023 with liberty to file a fresh, the application is allowed and Mr. Swastik Singh, Advocate, Mobile No.9717419767, is hereby appointed as the Sole Arbitrator to adjudicate the disputes between the parties.

6. The parties are at liberty to raise their respective objections contended herein, before the learned Arbitrator.



7. This is subject to the Arbitrator making necessary disclosure as under Section 12(1) of A&C Act, 1996 and not being ineligible under Section 12(5) of the A&C Act, 1996. However, the parties may consent to fees mutually or as per Schedule IV of the Arbitration & Conciliation Act, 1996.
8. The appointment of the Arbitrator shall be governed by the rules framed by the DIAC including the fees and the disclosure to be made by the learned Arbitrator in conformity of Section 12 of the Arbitration and Conciliation Act, 1996.
9. Learned counsels for the parties are directed to contact the learned Arbitrator within one week of being communicated a copy of this Order to them by the Registry.
10. This Order is without prejudice to the rights and contentions of the parties, which they are at liberty to raise before the learned Arbitrator.
11. A copy of this Order be also forwarded to the learned Arbitrator, for information.
12. The petition is accordingly disposed of in the above terms.

NEENA BANSAL KRISHNA, J

FEBRUARY 20, 2024

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