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

+ **ARB.P. 208/2024**

PRASAR BHARATI

.....Petitioner

Through: Mr. Bijoy Kumar Pradhan and Ms.
Madhusmita Bora, Advocates.

versus

**M/S SHREE MADHAV POLYPRODUCTS AND TRADING PVT.
LTD.**

.....Respondent

Through: Mr. Rameezuddin Raja & Ms.
Surabhi Sinha, Advocates.

CORAM:

HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

ORDER

25.09.2024

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1. The present petition under Section 11(6) of the Arbitration and Conciliation Act, 1996 (*hereinafter referred to as "Arbitration Act"*) has been filed by the Petitioner for appointment of an Arbitrator to adjudicate the dispute between the Petitioner and the Respondent in terms of the Arbitration Clause set out in Clause – 5 of the Accreditation Agreement dated 18.01.2000 which was entered into between the parties.
2. Material on record indicates that the Accreditation Agreement dated 18.01.2000 contains an Arbitration Clause being Clause - 5 for referring the dispute to an Arbitrator. Since dispute arose between the parties, the Petitioner approached this Court by filing an ARB.P. 12/2004 for appointment of an Arbitrator and this Court *vide* Order dated 07.05.2004 allowed the said petition and appointed Justice N. N. Goswamy (Retired) as a Sole Arbitrator. Unfortunately, during the pendency of the proceedings



Justice N. N. Goswamy (Retired) passed away on 18.12.2010. Material on record indicates that Petitioner, thereafter, filed an E.A. No.1125/2011 before this Court for substitution of Arbitrator and this Court appointed Justice J. B. Goel (Retired) as a Sole Arbitrator. The proceedings went about 09 years but on 10.10.2020, the Ld. Arbitrator - Justice J. B. Goel (Retired) recused himself from the case stating that he was not in a position to continue the arbitration due to his ill health.

3. Material on record further indicates that on 25.01.2023, the Director General, Doordarshan appointed Mr. Amit Kumar, Senior Advocate as a Sole Arbitrator who continued the proceedings but on 02.05.2023, the Ld. Arbitrator - Mr. Amit Kumar, Senior Advocate, posed a question as to whether he could have been appointed as a Sole Arbitrator by the Director General, Doordarshan and *vide* Order dated 02.05.2023, the the Ld. Arbitrator - Mr. Amit Kumar, Senior Advocate had directed the Petitioner to approach the this Court under Section 11 of the Arbitration Act.

4. It is pertinent to mention at this juncture that the initial Arbitrator - Justice N. N. Goswamy (Retired) had been appointed by this Court *vide* Order dated 07.05.2004 passed in ARB.P. 12/2004 and on the demise of Justice N. N. Goswamy (Retired) on 18.12.2010, the substituted Arbitrator - Justice J. B. Goel (Retired) had also been appointed by this Court. Undoubtedly, the Petitioner could not have appointed Mr. Amit Kumar, Senior Advocate as Arbitrator and, therefore, the Ld. Arbitrator - Mr. Amit Kumar was justified in directing the Petitioner to approach this Court *vide* Order dated 02.05.2023.

5. The Petitioner has, therefore, approached this Court by filing the present petition for appointment of an Arbitrator.



6. Notice was issued in the petition on 16.02.2024. Reply and Rejoinder have been filed.

7. On 05.09.2024, this Court had directed the Petitioner to justify the delay in approaching this Court for appointment of an Arbitrator as the Second Arbitrator - Justice J. B. Goel (Retired) recused himself way back in the year 2020. Paragraph No.5 of the Order dated 05.09.2024 reads as under:

“5. Mr. Rameezuddin Raja, learned Counsel for the respondent, has, among other objections, submitted that the petitioner cannot wake up at this late hour and approach the court for a substitute arbitrator when the second arbitrator appointed by this Court had recused on 10 October 2020. He submits that there was no justification for the petitioner who had unilaterally appointed a third arbitrator to arbitrate on the dispute, when the petitioner was well aware of the legal position. Even otherwise, he submits that, there is no explanation for the delay between 10 October 2020, when the second arbitrator recused and 25 January 2023 when the unilateral appointment of the third arbitrator took place.”

8. In compliance of the aforesaid Order dated 05.09.2024, an affidavit has been filed by the Deputy Director General, Doordarshan disclosing the reasons. Paragraph No.3 of the said affidavit which explains the reasons reads as under:

“3. That there was delay in appointing the Learned Arbitrator, due to the following reasons:

i. Firstly, that there were frequent transfers and retirement of concerned dealing officials during the above-mentioned period i.e., from the year 2020 to 2023.



ii. Secondly, that the post of the Director General: Doordarshan, was also vacant on several occasions during the intervening period between 2020 to 2023, resulting in delay.

iii. Thirdly, the physical records of Prasar Bharati are stored in the basement in a confined space with poor ventilation with restricted entry due to the onset of Covid - 19 related safety protocols. Further, these records are voluminous and running into hundreds of files. These records being decades old are of fragile nature. Thus for initiating the appointment of Learned Arbitrator and accessing and tracing of physical documentation pertaining to the present arbitration petition was stalled for some period as the entry to the basement was restricted due to spread of Covid - 19.”

9. A perusal of the aforesaid affidavit shows complete callousness on the part of the Petitioner in approaching this Court for appointment of an Arbitrator when Justice J. B. Goel (Retired) *vide* letter dated 10.10.2020 clearly stated that he would not be in a position to continue the arbitration due to his ill health. Arbitrator was appointed by this Court and even the Substituted Arbitrator was appointed by this Court and, therefore, the Petitioner ought to have approached this Court immediately after 10.10.2020 when Justice J. B. Goel (Retired) recused himself from the case. The delay in approaching this Court from 10.10.2020 has not been explained properly. No valid reason has been given by the Petitioner explaining the delay of 04 years.

10. In view of the above, this Court is inclined to impose costs of Rs.50,000/- on the Petitioner for delay in approaching this Court for



appointment of an Arbitrator.

11. This Court is inclined to appoint Justice Asha Menon, a Former Judge of this Court, as the Sole Arbitrator to continue with the proceedings.

12. The Petitioner is directed to collect the arbitral records from the office of Ld. Arbitrator - Mr. Amit Kumar, Senior Advocate, and place the same before Ld. Arbitrator - Justice Asha Menon.

13. The Ld. Arbitrator - Justice Asha Menon is directed to furnish the requisite declaration required under Section 12 of the Arbitration and Conciliation Act, 1996. The Ld. Arbitrator - Justice Asha Menon can fix her fees in accordance with the Arbitration and Conciliation Act, 1996.

14. With these observations, the petition is disposed of, along with pending application(s), if any.

SUBRAMONIUM PRASAD, J

SEPTEMBER 25, 2024

S. Zakir