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

+ O.M.P. (T) (COMM.) 93/2024

TELECOMMUNICATIONS CONSULTANTS
INDIA LIMITED

.....Petitioner

Through: Mr. Nikhilesh Krishnan & Mr.
Abhishek B. Singh, Advocates.

versus

RAJPUT CONSTRUCTION

.....Respondent

Through: Ms. Mercy Hussain, Advocate.

CORAM:

HON'BLE MR. JUSTICE PRATEEK JALAN

ORDER

% **19.09.2024**

I.A. 39852/2024(for exemption)

Exemption allowed, subject to all just exceptions.

The application stands disposed of.

O.M.P. (T) (COMM.) 93/2024

1. By way of this petition, under Sections 14 and 15 of the Arbitration and Conciliation Act, 1996 ["the Act"], the petitioner seeks appointment of a substitute arbitrator to adjudicate disputes between the parties arising out of a Memorandum of Understanding dated 25.07.2008 and a Work Order dated 30.09.2008.

2. Disputes having arisen between the parties, the petitioner appointed an arbitrator on 22.03.2018. The proceedings have been in progress since,



including an extension of the mandate of the arbitrator by an order dated 25.07.2023 in O.M.P.(MISC.)(COMM) 432/2019.

3. The present petition is occasioned by an order of the learned Arbitrator dated 27.05.2024, by which he has withdrawn from the arbitration proceedings, in view of an application filed by the respondent under Section 13(2) r/w Section 14 of the Act.

4. Without getting into any other controversy, Mr. Nikhilesh Krishnan, learned counsel for the petitioner, submits that a substitute arbitrator may be appointed in view of the aforesaid order.

5. Ms. Mercy Hussain, learned counsel for the respondent, accepts that a substitute arbitrator is required to be appointed, without prejudice to the rights and contentions of the respondent in the arbitral proceedings. However, she submits that the Court may pass necessary directions with regard to conduct of further proceedings, bearing in mind that the erstwhile arbitrator was unilaterally appointed by the petitioner, contrary to the judgments in *TRF Limited vs. Energo Engineering Projects Limited* [(2017) 8 SCC 377] and *Perkins Eastman Architects DPC & Anr. vs. HSCC (India) Limited* [(2020) 20 SCC 760].

6. With the consent of learned counsel for the parties, the petition is disposed of with the following directions: -

- a. The disputes between the parties are referred to arbitration of Hon'ble Mr. Justice Sanjib Banerjee, former Chief Justice, High Courts of Madras and Meghalaya [Tel: 9836268256].
- b. The learned Arbitrator is requested to furnish a declaration under Section 12 of the Act, prior to entering upon the reference.
- c. The proceedings will be taken up by the learned arbitrator from the



stage at which they were before the erstwhile arbitrator. However, Ms. Hussain submits that the respondent's counter claim was not taken on record for want of payment of fees, and that cross-examination of the claimants' witnesses [CW-1 and CW-2] was also closed, despite an application made by the respondent. It will be open to the respondent to apply before the learned Arbitrator appointed today, for taking the counter claim on record upon payment of the requisite fees, and for recall of witnesses. Keeping the provisions of Section 15(3) of the Act in mind, if the learned Arbitrator is of the view that it is appropriate to repeat any of the stages of the hearing, he may pass such directions after hearing learned counsel for the parties.

- d. As far as the petitioner's claims are concerned, Mr. Krishnan states that the respondent's statement of defence has been taken on record and he has also filed the replication. The arbitration will proceed on this basis.
- e. Learned counsel for the parties are requested to obtain the arbitral record from the erstwhile arbitrator, and place the same before the learned Arbitrator appointed today.
- f. The arbitration will be held under the aegis of Delhi International Arbitration Centre, Delhi High Court, Shershah Road, New Delhi-110503 ["DIAC"], and will be governed by the Rules of DIAC, including as to the remuneration of the learned Arbitrator.
- g. Learned counsel for the parties assure the Court that the parties will cooperate with the learned Arbitrator for expeditious disposal of the proceedings.



- h. For the purposes of Section 29(A) of the Act, the mandate of the learned Arbitrator is fixed at 12 months from the date from which he enters into the reference.
7. This petition stands disposed of with the aforesaid directions.

PRATEEK JALAN, J

SEPTEMBER 19, 2024

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