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

+ O.M.P.(I) (COMM.) 296/2024

IMMEDIATE CONSTRUCTION COMPANY PRIVATE LIMITED

.....Petitioner

Through: Mr. Vivek Kishore, Mr. Vishwendera
Verma and Mr. Ahivali, Advocates.

versus

V S ANAND FOODS PROCESSING & ANR.Respondents

Through:

+ ARB.P. 1522/2024

V S ANAND FOODS PROCESSING AND ANR.Petitioners

Through:

versus

IMMEDIATE CONSTRUCATION COMPANY PVT LTD

.....Respondent

Through: Mr. Vivek Kishore, Mr. Vishwendera
Verma and Mr. Ahivali, Advocates.

CORAM:

HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

ORDER

20.11.2024

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1. ARB.P. 1522/2024 has been filed under Section 11(6) of the Arbitration and Conciliation Act, 1996 ('A&C Act') seeking appointment of an independent sole arbitrator to adjudicate the disputes between the parties.

2. It is stated that the Petitioner herein entered into a Tender Agreement dated 15.05.2023 with the Respondent herein for construction of a dairy building at V.S. Anand Foods Processing Barhi, Haryana. It is stated that disputes have arisen between the parties regarding non-payment of money. It is stated that the Petitioner herein sent a notice to the Respondent herein on 07.05.2024 invoking Clause 46 of the GCC of the Tender Agreement which provides for arbitration for adjudication of the disputes between the parties.



Vide reply dated 03.06.2024, the Respondent in ARB.P. 1522/2024 rejected the appointment of an arbitrator. Thereafter, the Petitioner has approached this Court by filing the present Petition.

3. Notice in the present Petition was issued on 30.09.2024. Learned Counsel appearing for the Respondent states that the Respondent does not have any objection to the appointment of Arbitrator.

4. In view of the fact that disputes have arisen between the Parties and there is an arbitration clause, this Court is inclined to appoint an Arbitrator to adjudicate upon the disputes between the Parties.

5. Accordingly, Mr. J. M. Sabharwal, Adv. (Mob. No. 9811038201) is appointed as the Sole Arbitrator to adjudicate upon the disputes between the parties.

6. The learned arbitrator shall be entitled to fees as per the Schedule of Fees mentioned under the A&C Act.

7. The learned arbitrator is also requested to file the requisite disclosure under Section 12(2) of the Arbitration & Conciliation Act within a week of entering on reference.

8. All rights and contentions of the parties in relation to the claims/counter-claims are kept open, to be decided by the learned Arbitrator on their merits, in accordance with law.

9. In O.M.P.(I) (COMM.) 296/2024, which is an application under Section 9 of the Arbitration Act, has been filed with the following prayers:

“a) Direct the Respondent to return the assets of the Petitioner viz. the plant and Machineries and the stock / consumables lying at the site unused at the time of termination, which has become returnable to the Petitioner in view of the termination of the LOI; and in alternative

b) Direct the Respondent to secure the assets of the Petitioner viz. the plant and Machineries and the stock



/ consumables lying at the site by depositing /furnishing appropriate security, bank guarantee or deposit in an escrow account or any other mode as deemed appropriate for an amount of Rs. 80,00,000/- (Rupees Eighty Lakhs only). And

c) Direct the Respondent to pay monthly rent towards the Plant and Machineries @ Rs. 2,00,000/- per month till the time the same are not returned in the Petitioner's custody; which are being held wrongfully by the Respondent at their project site. The Petitioner is paying rent for Plant and Machineries and for Scaffolding Materials.

d) Pass ex-parte ad-interim orders in terms of aforementioned prayer and confirm the same upon notice pending final adjudication of the present petition;

e) Pass such other or further orders as this Hon'ble Court may deem fit and proper in the facts and circumstances of the present case.”

10. In view of the fact that this Court has appointed an Arbitrator in the Arbitration Petition, the learned Sole Arbitrator is directed to decide O.M.P.(I) (COMM.) 296/2024 under Section 17 of the Arbitration Act within four weeks of entering the reference.

11. Needless to say, nothing in this order shall be construed as an expression of this Court on the merits of the contentions of the parties.

12. The petitions stand disposed of in the above terms.

SUBRAMONIUM PRASAD, J

NOVEMBER 20, 2024

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