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

+ O.M.P. (T) (COMM.) 20/2025

M S GIRIYAPPA AND ASSOCIATE

.....Petitioner

Through: Mr. S.K. Maniktala, Mr. Udit Maniktala, Mr. Kritik, Mr. Mohit Sharma, Mr. Sanchit Jain, Mr. Yash Sharma and Mr. Viven Suhag, Advs.

versus

INDIA TOURISM DEVELOPMENT CORPORATION LTD

.....Respondent

Through: *Appearance not given*

CORAM:

HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

ORDER

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03.11.2025

1. The instant petition has been filed under Section 15(2) of the Arbitration & Conciliation Act, 1996 for appointment of a substitute Arbitrator.
2. Shorn of unnecessary details, the facts of the case reveal that the Petitioner was awarded a contract for supply of certain furniture items for the sum of Rs.42,20,200/- by the Respondent.
3. Disputes arose between the parties. In terms of the dispute resolution clause, which gives the power to the Respondent to appoint the Arbitrator, the Respondent appointed an Arbitrator on 21.04.2011.
4. It is stated that due to ill health, the Sole Arbitrator resigned on 17.03.2022. Since the Respondent did not appoint any substitute Arbitrator, the Petitioner issued a notice to the Respondent for appointment of an Arbitrator on 03.02.2025. Thereafter, a reminder notice dated 10.02.2025



was also issued to the Respondent. Since there was no response from the Respondent, the Petitioner has approached this Court by filing the instant petition for appointment of a substitute Arbitrator.

5. Both sides are *ad idem* that the procedure for appointment of an Arbitrator as envisaged under the arbitration clause giving power to the Respondent to appoint the Arbitrator has been held to be bad in law by the various judgments of the Apex Court. [Refer to: Perkins Eastman Architects DPC & Anr. v. HSCC (India) Limited, (2020) 20 SCC 760 & Central Organisation for Railway Electrification v. ECI-SPIC-SMO-MCML (JV), (2020) 14 SCC 712]. Therefore, the Respondent had no power to appoint an Arbitrator.

6. The question which arises for consideration is as to whether the Petitioner has to file a fresh petition under Section 11 of the Arbitration & Conciliation Act or can this Court under Section 15 of the Arbitration & Conciliation Act appoint a substitute Arbitrator.

7. Undoubtedly, Section 21 of the Arbitration & Conciliation Act stipulates that the arbitration proceedings can commence only after a notice under Section 21 is issued. In the present case, a notice under Section 21 has already been issued which led to the initiation of the arbitration proceedings at the behest of the Respondent when the Respondent appointed its own Arbitrator.

8. Since proceedings had commenced and the Arbitrator had been appointed, who subsequently resigned as an Arbitrator on 17.03.2022 and later on has passed away, this Court does not find any impediment in appointing an Arbitrator under Section 11 of the Arbitration & Conciliation Act treating this petition filed under Section 15 of the Arbitration &



Conciliation Act as one under Section 11 of the Arbitration & Conciliation Act.

9. Accordingly, Mr. Sanjay Vashishtha, Advocate (Mob: 9999753811) is appointed as the Sole Arbitrator to adjudicate upon the disputes between the parties.

10. The arbitration would take place under the aegis of the Delhi International Arbitration Centre (DIAC) and would abide by its rules and regulations. The learned Arbitrator shall be entitled to fees as per the Schedule of Fees maintained by the DIAC.

11. The learned Arbitrator is also requested to file the requisite disclosure under Section 12(2) of the Arbitration & Conciliation Act, 1996 within two weeks of entering into reference.

12. 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.

13. It is open for the Respondent to raise all contentions including the question of limitation before the learned Sole Arbitrator.

14. 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.

15. It is for the learned Sole Arbitrator whether to initiate proceedings afresh or continue with the earlier proceedings.

16. The petition is disposed of along with pending application(s), if any.

SUBRAMONIUM PRASAD, J

NOVEMBER 3, 2025

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