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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ O.M.P.(MISC.)(COMM.) 34/2024
MR. MOHAN LAL FATEHPURIAPetitioner
Through: Mr. Pradeep Aggarwal, Mr. Arjun Aggarwal and Mr. Aman Kumar, Advocates.
versus
M/S. BHARAT TEXTILES & ORS.Respondents
Through: Mr. S.C. Singhal and Mr. Saideep Kaushik, Advocates.

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+ O.M.P.(MISC.)(COMM.) 35/2024
MADHU DEVI FATEHPURIAPetitioner
Through: Mr. Pradeep Aggarwal, Mr. Arjun Aggarwal and Mr. Aman Kumar, Advocates.
versus
M/S JUGALKISHORE SHYAMPRAKASH AND CO. & ORS.Respondents
Through: Mr. S.C. Singhal and Mr. Saideep Kaushik, Advocates.

CORAM:
HON'BLE MS. JUSTICE JYOTI SINGH

ORDER
22.04.2025

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1. O.M.P.(MISC.)(COMM.) 34/2024 is preferred on behalf of the Petitioners under Section 29A(6) of Arbitration and Conciliation Act, 1996 ('1996 Act') read with Section 151 of CPC, 1908 seeking substitution of the Arbitrator and to extend the mandate of the newly appointed Arbitrator by 06 months to complete the remaining arbitral proceedings. Partnership Deed dated 18.05.1992 was entered into between the Petitioner and Respondents No. 2 to 4. Disputes having arisen between the parties, Petitioner filed a petition under Section 11(6) of 1996 Act being Arb. Pet. No. 340/2019 for

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appointment of an Arbitrator, which was allowed vide order dated 13.03.2020 appointing a Sole Arbitrator who entered upon reference in May, 2020. Pleadings were completed by the parties on 07.11.2021 and thereafter evidence of the Claimant was concluded on 09.04.2022 and matter was listed for Respondent's evidence who filed his evidence affidavit dated 27.06.2022.

2. O.M.P.(MISC.)(COMM.) 35/2024 is preferred on behalf of the Petitioners under Section 29A(6) of 1996 Act read with Section 151 of CPC, 1908 seeking substitution of the Arbitrator and to extend the mandate of the newly appointed Arbitrator by 06 months to complete the remaining arbitral proceedings. Partnership Deed dated 18.05.1992 was entered into between the Petitioner and Respondents No. 2 to 4. Disputes having arisen between the parties, Petitioner preferred a petition under Section 11(6) of 1996 Act being Arb. Pet. No. 339/2019 for appointment of an Arbitrator, which was allowed vide order dated 13.03.2020 appointing a Sole Arbitrator who entered upon reference in May, 2020. Pleadings were completed by the parties on 07.11.2021 and thereafter Petitioner's Attorney filed evidence affidavit dated 29.11.2021 and Attorney of Respondents No. 2 and 3 filed evidence affidavit dated 27.06.2022.

3. It is stated that on applications filed by the Petitioners in both the proceedings, learned Arbitrator appointed a Chartered Accountant as an independent Auditor who submitted its report but Respondent No. 2 filed objections to the same. Supplementary Reports were filed by the Auditor. Some disputes thereafter arose between the parties with respect to the fee of the Arbitrator as the parties were of the view that Arbitrator was charging more fees than the entitlement under Fourth Schedule as directed by this

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Court while appointing the Arbitrator and also charging exorbitant administrative expenses without accounting for the same. Respondents herein filed O.M.P. (T) (COMM.) 17/2022 and O.M.P. (T) (COMM.) 18/2022 under Sections 14 and 15 of the 1996 Act seeking termination of the mandate of the Arbitrator and appointment of a new Arbitrator.

4. By order dated 28.01.2022, both the petitions were dismissed by the Court for substitution of the Arbitrator on the ground that scope of interference under Section 14 of the 1996 Act is limited and mandate of an Arbitrator can be terminated if he is *de jure* or *de facto* unable to act as an Arbitrator. The Court found no disability or ineligibility against the Arbitrator in terms of Section 12(5) of the 1996 Act. It was also held that charging of any administrative expenses does not render the Arbitrator *de jure* or *de facto* ineligible to act as an Arbitrator. It was, however, clarified that all expenses required to be paid will be on the basis of actuals and it would be open to the Petitioners therein to ask the Arbitrator to account for administrative expenses charged by him. It was also directed that the Arbitrator cannot enhance the arbitral fees in the guise of charging administrative expenses. Neither party challenged this order.

5. The grievance of the Petitioners in the present petitions is that despite the earlier order of this Court, learned Arbitrator is demanding more administrative expenses and is failing to render any account for the same. The Arbitrator has already charged the requisite fees as per Fourth Schedule which has been duly paid and has also retained the substantial amounts towards costs imposed yet vide order dated 14.08.2023, further amount of Rs.30,000/- each has been sought towards administrative expenses. In this backdrop, it is prayed that the Arbitrator be substituted.

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6. Mr. Singhal, learned counsel for the Respondents supports the case of the Petitioners insofar as the demand of administrative expenses is concerned but submits that at this stage, substitution of an Arbitrator will further prolong the arbitration proceedings which have been on going since 2020. He submits that this Court may reiterate the directions passed by the Court on 28.01.2022 and direct the Arbitrator to complete the proceedings expeditiously.

7. Heard.

8. Insofar as the contention of learned counsel for the Petitioners that the learned Arbitrator be substituted as he is consistently demanding administrative expenses in the guise of fee is concerned, in the earlier round of litigation this Court vide order dated 28.01.2022 negated this contention. It was held that the Court was unable to accept that charging of any administrative expenses renders the Arbitrator *de jure* or *de facto* ineligible to act as an Arbitrator. Court had, however, clearly directed the Arbitrator not to enhance the arbitral fees in the guise of charging administrative expenses. It was also made clear that administrative expenses will be charged on actuals and it will be open to the Petitioners therein to ask for the accounts. In this backdrop, this Court is of the view that Petitioners in the present petitions cannot agitate the same issue that the Arbitrator has become *de jure* or *de facto* ineligible to act as an Arbitrator warranting his substitution.

9. There is however merit in the contention that the Arbitrator is bound to charge fee as per Fourth Schedule of the 1996 Act, which was a term of appointment by the Court when the Arbitrator was appointed. It is also correctly urged that the Arbitrator cannot enhance fee in the garb of seeking

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administrative expenses. Therefore, it is made clear that the Arbitrator will charge fee only as per the Fourth Schedule and no enhancement will be made. It is further directed that administrative expenses will be charged only as per actuals and parties shall be informed of the details of the expenditure incurred. Learned Arbitrator is also requested to expedite the arbitral proceedings and conclude them within a period of four months from today.

10. Accordingly, these petitions are partially allowed only to the extent of extending the mandate of the Arbitrator by a period of four months from 22.04.2025 and period between 01.04.2023 to 21.04.2025 is regularised.

JYOTI SINGH, J

APRIL 22, 2025/S.Sharma/shivam

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