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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **ARB.P. 1420/2024**
M/S COUNTER MEASURES TECHNOLOGIES (P) LTD
.....Petitioner

Through: Mr. Atul Kumar, Adv.

versus

NATIONAL SECURITY GUARD & ANR.Respondents

Through: Ms. Goel Choudhary, Adv.

CORAM:

HON'BLE MR. JUSTICE JASMEET SINGH

ORDER

28.03.2025

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1. This is a petition filed under Section 11 of Arbitration and Conciliation Act, 1996 (*"the Act"*) seeking appointment of an arbitrator to adjudicate the disputes between the parties, arising out of Acceptance of Tender dated 23.12.2021, bearing No. 70013/0050/2021-Proc Cell-HQNSG-1043.
2. Clause 27 of the General Conditions of Contract is the arbitration clause, which reads as under:

"27. ARBITRATION: -

In the event of any question, dispute or difference arising under these conditions or any special conditions of contract, or in connection with this contract (except as to any matters, the decision of which is specifically provided for by these or the special conditions), the same shall referred to the Sole Arbitration of the DG, NSG, Min. of Home Affairs or of some other person appointed by him under clause 9.9.1 and 9.9.2 of Manual for procurement of goods 2017. It will be no objection that the Arbitrator is a Government Servant that he had to deal with the matters to which the contract relates or that in the course of his duties as a Government servant he has expressed views on all or any of the matters in dispute or difference. The



award of the Arbitrator shall be final and binding on the parties to this contract, it is term of this contract that:

27.1. If the arbitrator be the DG, NSG, and Ministry of Home Affairs:

27.2. In the event of his being transferred or vacating his office by resignation or otherwise, it shall be for his successor in office either to Proceed with the reference himself or to appoint another person as Arbitrator : or

27.3. in the event of his being unable to act or becoming incapable of acting for any reason it shall be lawful for him to appoint another person as Arbitrator.

27.4. If the arbitrator be a person appointed by the DG, NSG, Ministry of Home Affairs:- In the event of his dying, neglecting or refusing to act, or resigning or being unable to act, for any reason or his award being set aside by the Court for any reason, it shall be lawful for the DG, NSG, Min. of Home Affairs either to Proceed with the reference himself or to appoint another person as Arbitrator in place or the outgoing Arbitrator. In every such case, it shall be lawful for the DG, NSG, Min. of Home Affairs in place of the outgoing Arbitrator, as the case may be to act on the record of the Proceedings as then taken in the arbitration, or to commence the Proceedings de novo, as he may at his discretion decide.

27.5. It further a term of this contract that no person other than DG, NSG, Min. of Home Affairs or the person appointed by him should act as arbitrator and that if for any reason that is not possible, the matter is not to be referred to arbitration at all.

27.6. The Arbitrator may with the consent of all the parties to the contract enlarge the time from time to time for making and publishing the award.

27.7. Upon any such reference, the assessment of the cost incidental to the reference and award respectively shall be in the discretion of the Arbitrator.



27.8. Subject as aforesaid, the Arbitration and Conciliation Act, 1896 and the rules there under and arbitration Proceedings under this clause.

27.9. The venue of arbitration shall be the place where the contract is concluded or such other place as the DG, NSG at his discretion may determine.

27.10. In this clause the expression DG, NSG, Min. of Home Affairs, means the DG, NSG for the time being & includes, if there be no DG, NSG, the officer who is for the time being the administrative head of the NSG. Min of Home Affairs whether in addition to other functions or otherwise.”

3. Since there were disputes between the parties, the petitioner invoked arbitration *vide* a Legal Notice dated 12.06.2024, to which, on 11.07.2024, the respondents sent a reply and did not agree to appointment of arbitrator.
4. Hence, the present petition.
5. The matter was referred to Mediation, however, the respondent was not interested to participate in the mediation proceedings. Hence, the matter was treated as “Non-starter”.
6. Ms. Chaudhary, learned counsel appearing on behalf of the respondents, has no objection to the present petition being allowed.
7. For the said reasons, the petition is allowed and the following directions are issued:
 - i. Delhi International Arbitration Centre, Delhi High Court, Sher Shah Road, New Delhi (hereinafter, referred to as the “DIAC”) shall appoint an Arbitrator as appointed in ARB.P. 1431/2024.
 - ii. The arbitration will be held under the aegis of the DIAC.



- iii. The remuneration of the learned Arbitrator shall be in terms of DIAC (Administrative Cost and Arbitrators' Fees) Rules, 2018.
 - iv. The learned Arbitrator is requested to furnish a declaration in terms of Section 12 of the Act prior to entering into the reference.
 - v. It is made clear that all the rights and contentions of the parties, including as to the arbitrability of any of the claim, any other preliminary objection, as well as claims/counter-claims and merits of the dispute of either of the parties, are left open for adjudication by the learned arbitrator.
 - vi. The parties shall approach the learned Arbitrator within two weeks from today.
8. The present petition is disposed of accordingly.

JASMEET SINGH, J

MARCH 28, 2025/pk

Click here to check corrigendum, if any