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

+ O.M.P. (T) (COMM.) 109/2024

SH. RAJ KALRA & ANR.

.....Petitioners

Through: Mr. Rahul Sharma, Mr. Darsh Bansal,
Mr. BS Pathak, Ms. Neeshu, Advs.

versus

HARVINDER SINGH SETHI & ANR.

.....Respondents

Through: Ms. Bhavna Sharma, Adv. for R1 and
Mr. Jaspreet Singh, Adv. for R2

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+ O.M.P. (T) (COMM.) 110/2024

SMT. POONAM KALRA & ANR.

.....Petitioners

Through: Mr. Rahul Sharma, Mr. Darsh Bansal,
Mr. BS Pathak, Ms. Neeshu, Advs.

versus

HARVINDER SINGH SETHI & ANR.

.....Respondents

Through: Ms. Bhavna Sharma, Adv. for R1 and
Mr. Jaspreet Singh, Adv. for R2

CORAM:

HON'BLE MR. JUSTICE JASMEET SINGH

ORDER

27.03.2025

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1. This is a petition filed under Section 14 and 15(2) of the Arbitration and Conciliation Act, 1996 (*"the Act"*) seeking appointment of a substitute arbitrator to adjudicate the dispute between the parties, arising out of a Lease Deed dated 24.07.2010.
2. The brief facts of the case are that on 24.07.2010, the petitioners in O.M.P.(T)(COMM.) 109/2024 entered into a lease with respondent No.2 for property bearing No. G-9, Paragon Mall, Rajouri Garden, New Delhi, for 3 years at a rent of Rs. 73,200/-. Similarly, the petitioners in O.M.P.(T)(COMM.) 110/2024 entered into a lease for



property bearing No. G-12, Paragon Mall, Rajouri Garden, New Delhi, for 3 years at a rent of Rs. 2,53,318/-.

3. On 16.07.2012, during the subsistence of the lease, petitioners entered into an Agreement to Sell (“ATS”) with respondent No.2 for their respective properties.
4. On 30.10.2012, respondent No.1 filed applications under Section 9 of the Act against the petitioners bearing Nos. O.M.P No.1042/2012 and O.M.P No.1043/2012. In both the petitions, respondent No.1 was granted *ad interim ex parte* orders of injunction.
5. On 20.02.2015, this Court, with the consent of the parties, appointed Mr. G.P. Thareja as the Sole Arbitrator, for the adjudication of disputes between the parties.
6. The proceedings continued until the Arbitrator passed away on 27.09.2023, halting the process at the evidence stage.
7. Hence, the present petition.
8. Mr. Bansal, learned counsel appearing on behalf of the petitioners, states that in the present case, the respondents are enjoying the injunction granted by this Court for the last 10 years and hence, there exists an urgency in the present petition.
9. Mr. Singh, learned counsel appearing on behalf of respondent No.2, opposes the present petition and relies upon the judgment of this Court in ***DSC Ventures Pvt. Ltd. v. Ministry of Road Transport and Highways, 2020 SCC OnLine Del 669***, and more particularly paragraphs 21 and 49 which read as under:-

“21. The position, in law is, in my view, no longer res integra, being squarely covered by the judgement of the Supreme Court



in Yashwith Constructions (P) Ltd v. Simplex Concrete Piles India Ltd., not only in law, but even on facts. In that case, the sole arbitrator, who had been appointed by the Managing Director (MD) of the respondent before the Supreme Court (hereinafter referred to as “Simplex”) resigned. Thereupon, the MD of Simplex appointed another arbitrator, in accordance with the procedure for appointment of arbitrator, contained in the agreement between the petitioner before the Supreme Court (hereinafter referred to as “Yashwith”), and Simplex. Yashwith approached the learned Chief Justice of the High Court, under Section 11 (5), read with Section 15 (2) of the 1996 Act, praying that the substitute arbitrator be appointed by the learned Chief Justice. The learned Chief Justice upheld the appointment of the substitute arbitrator, by the MD of Simplex, as being in accordance with Section 15 (2) and, consequently, held that no occasion arose, for him to appoint a substitute arbitrator under Section 11 (6). The application of Yashwith was, accordingly, rejected. A challenge, to the decision of the learned Chief Justice, also stood dismissed by the Division Bench of the High Court. The Supreme Court, in appeal, upheld the decision of the Division Bench of the High Court, as well as of the learned Chief Justice, and ruled, in para 4 of the report, thus :

“4. In our view, the learned Chief Justice and the Division Bench have rightly understood the scope of Section 15 of the Act. When the arbitrator originally



appointed in terms of the arbitration agreement withdrew for health reasons, the Managing Director, as authorized originally by the arbitration agreement, promptly appointed a substitute arbitrator. It is true that in the arbitration agreement there is no specific provision authorizing the Managing Director to appoint a substitute arbitrator if the original appointment terminates or if the originally appointed arbitrator withdraws from the arbitration. But, this so-called omission in the arbitration agreement is made up by the specific provision contained in Section 15(2) of the Act. The withdrawal of an arbitrator from the office for any reason is within the purview of Section 15(1)(a) of the Act. Obviously, therefore, Section 15(2) would be attracted and a substitute arbitrator has to be appointed according to the rules that are applicable for the appointment of the arbitrator to be replaced. Therefore, what Section 15(2) contemplates is an appointment of the substituted arbitrator or the replacing of the arbitrator by another according to the rules that were applicable to the appointment of the original arbitrator who was being replaced. The term “rules” in Section 15(2) obviously referred to the provision for appointment contained in the arbitration agreement or any rules of any institution under which the disputes were referred to arbitration. There was no failure on the part of the concerned party



as per the arbitration agreement, to fulfil his obligation in terms of Section 11 of the Act so as to attract the jurisdiction of the Chief Justice under Section 11(6) of the Act for appointing a substitute arbitrator. Obviously, Section 11(6) of the Act has application only when a party or the concerned person had failed to act in terms of the arbitration agreement. When Section 15(2) says that a substitute arbitrator can be appointed according to the rules that were applicable for the appointment of the arbitrator originally, it is not confined to an appointment under any statutory rule or rule framed under the Act or under the scheme. It only means that the appointment of the substitute arbitrator must be done according to the original agreement or provision applicable to the appointment of the arbitrator at the initial stage. We are not in a position to agree with the contrary view taken by some of the High Courts.

5. Since here, the power of the Managing Director of the respondent is saved by Section 15(2) of the Act and he has exercised that power on the terms of the arbitration agreement, we see no infirmity either in the decision of the learned Chief Justice or in that of the Division Bench.”

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49. It is self-evident that the controversy, which arose before the Supreme Court in A. C. C. Ltd., is not even remotely similar



to that which arises in the present case. Even so, para 17 of the report in A. C. C. Ltd is instructive, and merits reproduction:

“Section 15(2) of the Act provides that where a substitute arbitrator has to be appointed due to termination of the mandate of the previous arbitrator, the appointment must be made according to the rules that were applicable to the appointment of the arbitrator being replaced. No further application for appointment of an independent arbitrator under Section 11 will lie where there has been compliance with the procedure for appointment of a substitute arbitrator. On appointment of the substitute arbitrator in the same manner as the first, no application for appointment of independent arbitrator under Section 11 could be filed. Of course, the procedure agreed upon by the parties for the appointment of the original arbitrator is equally applicable to the appointment of a substitute arbitrator, even if the agreement does not specifically say so. Reference may be made to the judgment of this Court in Yashwith Constructions (P) Ltd. v. Simplex Concrete Piles India Ltd. [(2006) 6 SCC 204].””

10. He further states that Clause 14 of the ATS reads as under:-

“14. That in case of any dispute with regard to the present agreement the same shall be referred to Shri Avtar Singh (Advocate), for arbitration the name of the sole arbitrator has been mutually agreed between the parties and the decision of



the arbitrator shall be binding on both the parties.”

11. Hence, the parties would have to refer all the disputes to Mr. Avtar Singh, Advocate, the named arbitrator in the ATS.
12. I have heard learned counsel for the parties and perused the material on record.
13. On perusal, the Hon’ble Supreme Court in the cases of *ACC Ltd. v. Global Cements Ltd.*, (2012) 7 SCC 71 and *Yashwith Constructions (P) Ltd. v. Simplex Concrete Piles India Ltd.*, (2006) 6 SCC 204, has held that where a substitute arbitrator has to be appointed due to termination of the mandate of the previous arbitrator, the appointment must be made according to the rules that were applicable to the appointment of the arbitrator being replaced.
14. In the present case, the respondents categorically gave up their rights to proceed with the arbitration before Mr. Avtar Singh and consented to the appointment of Mr. G.P. Thareja, as a Sole Arbitrator, by this Court. Thus, this Court appointed a neutral arbitrator with the consent of the parties in the present case.
15. The procedure for appointment of an arbitrator as per Clause 14 of the ATS has been waived off by the respondents and additionally, the respondents have agreed to appointment of an arbitrator by the Court. Therefore, the procedure followed for appointment of the earlier arbitrator was “Appointment through Court”.
16. In view of the matter, since the earlier arbitrator was appointed by the Court, the substitute arbitrator as well should be appointed by the Court to adjudicate the disputes between the parties.
17. For the said reasons, the petition is allowed and the following



directions are issued:-

- i) Mr. J.R. Aryan (Retd. District Judge) (Mob. No. 9958697034) is appointed as a Sole Arbitrator to adjudicate the disputes between the parties.
 - ii) The arbitration will be held under the aegis of the Delhi International Arbitration Centre, Delhi High Court, Sher Shah Road, New Delhi (“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) The arbitrator shall commence the proceedings from the stage where the earlier arbitrator had left.
 - vi) The parties shall approach the learned Arbitrator within two weeks from today.
18. The present petition is disposed of accordingly.

JASMEET SINGH, J

MARCH 27, 2025 / (MS)

Click here to check corrigendum, if any