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

\+ O.M.P. (T) (COMM.) 67/2021 & I.A. 9112-13/2021

SWEKA POWERTECH ENGINEERS PVT LTD ..... Petitioner

Through: Mr. Gaurav Sarin, Mrs. Charul Sarin and Mr. Harish Kumar, Advocates.

versus

EAST DELHI MUNICIPAL CORPORATION & ORS. ..... Respondents

Through: Mr. Tushar Sannu, Standing Counsel EDMC with Ms. Ankita Bhadouriya and Mr. Subham Jain, Advocates.

CORAM:
HON'BLE MR. JUSTICE SANJEEV NARULA

O R D E R

% 28.07.2021

[VIA VIDEO CONFERENCING]

1. The present petition under Section 14 (1) read with Section 15 (2) of the Arbitration and Conciliation Act, 1996 (hereinafter the 'Act') has been filed on account of unfortunate demise of the learned Arbitrator - Late Justice (Retd.) Anil Kumar.

2. Since the mandate of the learned Arbitrator stands terminated by virtue of Section 14 (1) (a) of the Act, a substitute Arbitrator has to be appointed in terms of Section 15 (2) of the Act.

3. Mr. Gaurav Sarin, learned counsel for the Petitioner states that while making the appointment of the learned Arbitrator, this Court vide order

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dated 25th March, 2014, directed that the learned Sole Arbitrator shall be paid fees as per the rules of the Delhi High Court Arbitration and Conciliation Centre (now known as Delhi International Arbitration Centre). Mr. Sarin further states that the entire Arbitral fee in terms of the said rules stood paid.

4. By referring to Delhi International Arbitration Centre (Administrative Cost and Arbitrator's Fee) Rules 2018, Mr. Sarin points out that in terms of the said rules, 40% of the total fee is paid to the Arbitrator after the passing of the Award. He submits that this Court may consider this to be a benchmark for fixing the fee of the Arbitral Tribunal, having regard to the fact that the entire proceedings have been concluded. The parties had filed written submissions; arguments had also been concluded; and only Award had to be passed.

5. Having regard to the facts noted above, the present petition is allowed.

6. Accordingly, Hon'ble Mr. Justice J.R. Midha (Retd.), Judge of this Court (Mob: 9717495003) is appointed as the substitute Arbitrator for adjudication of the disputes which were pending before the erstwhile Arbitrator. The learned Arbitrator shall be entitled to charge his fee being 40% of the fee payable under Fourth Schedule appended to the Act. The hearings previously held shall not be repeated at the discretion of the Arbitral Tribunal.

7. The parties are directed to appear before the learned Sole Arbitrator as

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and when notified. This is subject to the Arbitrator making the necessary disclosure under Section 12(1) of the Act and not being ineligible under Section 12(5) of the Act.

8. The petition is allowed in the above terms and the pending applications are also disposed of.

SANJEEV NARULA, J

JULY 28, 2021
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