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

\+ O.M.P.(MISC.)(COMM.) 429/2019

UNION OF INDIA THROUGH COFMOW ..... Petitioner

Through: Mr. Himanshu Pathak, Sr. Panel Counsel (Ph. 9643121390, e-mail:hpathak1951@gmail.com)

versus

M/S PRISM SURFACE COATING (P) LTD. ..... Respondent

Through: Mr. T.S. Suresh, Mr. Saket Gogia, Advocates (Ph.9739046560, e-mail: saketgogia@lawttitude.com).

CORAM:
HON'BLE MS. JUSTICE MINI PUSHKARNA

O R D E R

% 16.08.2022

1. This is a petition under Section 29A (5) of Arbitration and Conciliation Act, 1996 (hereinafter referred to as 'the Act') with a prayer for extending the mandate of the learned Arbitrator from 28.03.2019 till such time and on such terms and conditions that this Court deems fit.

2. When the matter was listed for hearing on 22.07.2022, learned counsel appearing for the respondent referred to the letter dated 30.01.2020 received from the learned arbitrator, wherein the arbitrator expressed her inclination for not continuing with the matter any further owing to the conduct of the parties.

3. Learned counsel appearing for the respondent/ claimant before the learned Arbitrator, submits that he has already paid his share of the

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fees to the learned arbitrator.

4. On the other hand, Mr. Himanshu Pathak, Advocate appearing for the petitioner submits that he has no instructions as regards the payment of fees which is due and payable to the learned arbitrator- Ms. Bela Banerjee.

5. Learned counsel for the petitioner i.e. Union of India is directed to seek instructions and ensure that if any fees is due and payable to the earlier sole arbitrator - Ms. Bela Banerjee, the same may be paid forthwith.

6. The respondent has filed a reply to the present petition. In the said reply, it is stated that respondent has no objection if the present arbitrator is substituted and a new arbitrator is appointed in place of the earlier arbitrator, since the earlier arbitrator is not desirous of continuing with the matter any further. Learned counsel for the petitioner has also made a statement before this Court that he has instructions to state that the Union of India has no objection for substitution of an arbitrator.

7. Learned counsel appearing for the respondent/ claimant submits that he has raised claims to the tune of approximately Rs.1,54,00,000/- before the learned arbitrator. However, he submits that he has other additional claims on account of certain documents which came to his knowledge only subsequently and that he shall be filing appropriate application before the Arbitrator in this regard.

8. It is noted that there are counter-claims on behalf of the Union of India to the tune of approximately Rs.13 crores.

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9. Considering the submissions made before this Court, Mr.Sanjoy Ghose, Senior Advocate (Mobile No. 9810039326, e-mail:davisinghsradv@gmail.com) is appointed as the sole arbitrator.

10. At request of the parties, the arbitration shall be conducted under the aegis of the Delhi International Arbitration Centre (in short 'DIAC').

11. The learned arbitrator shall ensure the compliance of Section 12 read with 5th, 6th and 7th Schedule of the Act, before commencing the arbitration.

12. The fees of the learned Arbitrator shall be in accordance with the Schedule of the fees prescribed under the Delhi International Arbitration Centre (DIAC) (Administrative Costs and Arbitrators' Fees) Rules, 2018.

13. All rights and contention between the parties are left open for consideration by the learned sole arbitrator.

14. The parties are directed to appear before the DIAC on 31.08.2022.

15. The petition is disposed of in the aforesaid terms.

MINI PUSHKARNA, J

AUGUST 16, 2022
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