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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ O.M.P. (T) (COMM.) 112/2023, I.A. 24177/2023, I.A. 24178/2023

KAMLADITYYA CONSTRUCTION PVT LTD Petitioner

Through: Mr Praveen Chauhan, Mr Sarthak
Soushney and Ms Malvika Satija,
Adv.

versus

UNION OF INDIA Respondent

Through: Mr Jitesh Vikram Srivastava, SPC
with Mr Prajesh Vikram Srivastava,
Adv.

CORAM:
HON'BLE MR. JUSTICE JASMEET SINGH

ORDER

% **27.02.2024**

1. This is a petition under Section 14(1)(2) and 15(2) read with the Seventh Schedule of the Arbitration & Conciliation Act, 1996 seeking to terminate the mandate of the Arbitrator and to substitute another Arbitrator in place of Dr. S.K. Dhawan (Retired Chief Engineer, CPWD).

2. As per the petition, it is stated that the arguments in the matter were concluded on 28.08.2023. The mandate of the Arbitrator was to expire on 01.09.2023.

3. After the expiry of the mandate, the learned Sole Arbitrator took up the matter on 12.09.2023 and requested the parties to give consent for extension of time for passing of the Award. However, it is stated that on 12.09.2023, the learned Arbitrator openly and pre-maturely revealed the Award with respect to several claims of the petitioner to the respondent and



hence, flouted the provisions of confidentiality under Section 42A of the Arbitration & Conciliation Act, 1996. It is also alleged by the petitioner that the Arbitrator was requesting the respondent to appoint him in more arbitrations.

4. Hence, the present petition.

5. The learned counsel for the petitioner, who attended the hearing on 12.09.2023, has also filed an affidavit in support of the above said allegations raised by the petitioner.

6. In reply, it is stated by the learned counsel for the respondent that the computer kept in the room is operated by staff of DIAC and therefore it is not possible for the Arbitral Tribunal to show part of the Award to the respondent. Further, the allegation against the Arbitrator seeking further arbitrations has also been denied by the respondent. The affidavit of the learned counsel for the petitioner has also been denied.

7. A report was called from DIAC and the DIAC has stated that:

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i) That as regards the status of affairs in the matter during the hearing dated 12.09.2023, oral enquires have also been made from the concerned Staff of DIAC. From the said enquiry, it has transpired that on 12.09.2023, Ld. Arbitrator was dictating the Award in the hearing room which was being typed by the P.A. on his desktop computer, being mirrored on the large display in the room, as per the general practice and upon arrival of Parties/ Ld counsel for parties, the Ld. Arbitrator started discussing



the issue of mandate of Tribunal with the parties. On his part, the P.A. minimized the computer screen on which Award was being typed to ensure that the parties were not able to see the Award.

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3. Since the dictation of award is usually in enclosed space and due to confidentiality reasons, the staff other than barest minimum required, is not present in the room, the Centre would not be in a position to comment upon any formal or informal discussion between the parties and the Ld. Arbitrator.”

8. Section 42A of the Arbitration & Conciliation Act, 1996 reads as under:

“42A. Confidentiality of information.-- Notwithstanding anything contained by any other law for the time being in force, the arbitrator, the arbitral institution and the parties to the arbitration agreement shall maintain confidentially of all arbitral proceedings except award where its disclosure is necessary for the purpose of implementation and enforcement of award.”

9. A perusal of the section shows that strictest of confidentiality is required to be maintained with regard to arbitration proceedings and the Award. The Arbitrator is exercising an important function of adjudicating the dispute between the parties and cannot reveal the Award to either of the parties, even while dictating it to the staff of DIAC. The report of DIAC seems to suggest that the arbitral award was visible to the respondent on the hearing of 12.09.2023. The affidavit of the counsel for the petitioner also is supporting the above stance.



10. For the said reasons, the petition is allowed and the mandate of the Arbitrator is hereby terminated.

11. Justice Satish Agnihotri, (Retd. Chief Justice of Sikkim High Court) (Mobile No. 9498095770) is appointed as an Arbitrator to adjudicate the disputes between the parties. The Arbitrator will continue the proceedings from the stage of final arguments in terms of section 29A(6) of the Arbitration & Conciliation Act.

12. Since the parties have already paid the entire fee as per IV Schedule, the DIAC shall apportion the fee between Dr S.K. Dhawan (Retired Chief Engineer, CPWD), i.e. the earlier appointed Sole Arbitrator, and the new Arbitrator appointed today.

13. The petition is disposed of accordingly.

JASMEET SINGH, J

FEBRUARY 27, 2024

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[Click here to check corrigendum, if any](#)