

MANU/DE/4961/2018

**IN THE HIGH COURT OF DELHI**

O.M.P. (T) (COMM.) 120/2018 and I.A. No. 15421/2018

Decided On: 13.11.2018

Appellants: **Goel Construction Co. Pvt. Ltd.**

**Vs.**

Respondent: **The Institute of Chartered Accountants of India**

**Hon'ble Judges/Coram:**

*Navin Chawla, J.*

**Counsels:**

*For Appellant/Petitioner/Plaintiff: Shashank Garg, Tariq Khan and Debjyoti Sengupta, Advs.*

*For Respondents/Defendant: Dharmesh Mishra and Ankit Kakkar, Advs.*

**ORDER**

**Navin Chawla, J.**

**1.** This petition under section 14 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as the 'Act') has been filed by the petitioner challenging the mandate of the Arbitrator appointed by the President of the respondent in terms of the Arbitration Agreement between the parties.

**2.** The Arbitration Agreement between the parties is contained in clause 16 of the Agreement dated 07.02.2013 executed between the parties and reads as under:

"16. ARBITRATION:

That in case of any dispute or difference arising out in relation to meaning or interpretation of the document/agreement, authorized officials of both the parties shall try to resolve the same through discussions and conciliation, failing to which the matter shall be referred to a sole arbitrator to be appointed by the President of the ICAI. The Arbitration and Conciliation Act, 1996 will be applicable to the arbitration proceedings and the venue of the arbitration shall be at Delhi only. The award of the arbitrator shall be final and binding on the parties."

**3.** Disputes having arisen between the parties, the petitioner invoked the Arbitration Agreement vide its notice dated 24.08.2018. In response thereto the President of the respondent appointed the sole arbitrator by communication dated 26.09.2018. On 04.10.2018, the parties appeared before the arbitrator.

**4.** It is the contention of the learned counsel for the petitioner that the Arbitrator has wrongly recorded that the petitioner had no objection to the constitution of the tribunal. In fact, on that date, occasion for raising objection for the petitioner had not arisen as the petitioner was expecting a disclosure in terms of the Sixth Schedule of the Act.

**5.** The petitioner vide its email dated 05.10.2018 sought a disclosure in terms of the Sixth Schedule of the Act from the Arbitrator. The Arbitrator, however, sent an email

dated 06.10.2018 stating as under:

"The requirement of disclosure under the law in terms of Schedule VI would only arise, in the event, the Arbitral Tribunal had any kind of relationship either with the Counsels or the parties. However, as has been mentioned in the proceedings of 04.10.2018 that the Arbitral Tribunal has no disability as enumerated under Schedule V and VII of the Arbitration and Conciliation Act, 1996, hence it is explicit and it is reiterated that the Arbitral Tribunal has/had no relationship with either of the parties or their Counsels as envisaged under Schedules V and VII of the Act.

Hence, the disclosure as requested by you under Schedule VI is not required."

**6.** The learned counsel for the petitioner submits that the mandate of the Arbitrator is liable to be terminated as he has not given a disclosure in terms of the Sixth Schedule of the Act and also because his appointment was in violation of the section 12(5) of the Act. The learned counsel for the petitioner relying upon the judgment of TRF Ltd. vs. Energo Engineering Projects Ltd. MANU/SC/0755/2017 : (2017) 8 SC 377, submits that the President of the respondent himself being ineligible in terms of the Seventh Schedule of the Act to act as an Arbitrator, cannot appoint another person to act as an Arbitrator. He also tried to distinguish the judgment of this Court in Bhayana Builders Pvt. Ltd. v. Oriental Structural Engineering Pvt. Ltd., MANU/DE/0942/2018, on this aspect.

**7.** As far as the non disclosure of the Arbitrator in terms of the Sixth Schedule is concerned, as the Arbitrator has disclosed the major requirement of the said Schedule and it seems that the Arbitrator was under the misconception that he need not disclose the other relevant aspects of the Sixth Schedule to the Act, I grant one further opportunity to the Arbitrator to give disclosure in terms of the Sixth Schedule of the Act. Such disclosure should be given by the Arbitrator within one week of communication of this order.

**8.** The learned counsel for the petitioner, without prejudice to the rights and submissions of the parties, submits that as disclosure would be made by the Arbitrator pursuant to this order, the schedule for completion of pleadings fixed by the Arbitrator in his Procedural Order dated 04.10.2018 would require certain modifications. Learned counsel for the respondent submits that the respondent has no objection to the same.

**9.** The parties would, therefore, jointly approach the Arbitrator for fixing the schedule of completion of pleadings and for other procedural directions in that regard after the disclosure is received by the parties.

**10.** As far as challenge to the power of the President of the respondent to appoint an Arbitrator is concerned, in my view, the same is covered by the judgment of this Court in Bhayana Builders (supra) and therefore, I do not find any merit in the same.

**11.** The petition is disposed of with the above directions, with no order as to costs.

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