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

% **Date of decision: 16.09.2019**

+ **O.M.P. (T) (COMM.) 71/2019 and I.A. Nos. 11518/2019 and 11519/2019**

DSC LIMITED

..... Petitioner

Through: Mr. Tejasv Anand and Ms. Nishtha Wadhwa, Advocates.

versus

UNION OF INDIA

..... Respondent

Through: Mr. Rakesh Kumar, CGSC with Mr. Satish Kumar, E.E. in person.

CORAM:

HON'BLE MS. JUSTICE JYOTI SINGH

JYOTI SINGH, J. (ORAL)

1. This is a petition filed under Section 14 of the Arbitration & Conciliation Act, 1996 ('Act') seeking an order terminating the mandate of the Sole Arbitrator, Shri R.P. Tripathi.

2. Petitioner and respondent had entered into a contract on 24.03.2011 for construction of dwelling units including allied services for officers, JCOs etc. of the Indian Army. Disputes having arisen between the parties, the Arbitration Clause in the contract was invoked for appointment of the Sole Arbitrator. The Engineer-in-Chief of the respondent appointed Shri S.K. Gupta, a serving officer of the respondent as Sole Arbitrator on 12.03.2014. Challenge to the

appointment of Shri Gupta lead to filing of a petition in this Court under Section 14 by the petitioner, but the same was dismissed on 12.01.2015. Shri S.K. Gupta, however, resigned and the Engineer-in-Chief appointed Shri K.K.Gupta, as Sole Arbitrator on 30.10.2015.

3. The petitioner again objected to the appointment on the ground that the Act had been amended w.e.f. 23.10.2015 and the appointment of Shri K.K. Gupta was in contravention of Section 12(5) of the Act.

4. The petitioner then filed an application on 21.08.2017 under Section 16 of the Act seeking the resignation of the Sole Arbitrator in view of Section 12(5) of the Act as also on an apprehension of his impartiality and independence.

5. Shri K.K. Gupta, however, superannuated on 30.11.2018. The petitioner in his letter dated 23.01.2018 had earlier suggested the name of five officers to be appointed as the Sole Arbitrator, one of them being Shri R.P. Tripathi. The respondents accordingly nominated Shri R.P. Tripathi as the Sole Arbitrator, but the petitioner again objected to the said appointment on the ground of ineligibility under Section 12(5) of the Act.

6. Remaining unsuccessful in challenging the appointment of Shri R.P. Tripathi before the respondent, the present petition was filed.

7. When the matter was listed on 23.08.2019, learned counsel for the petitioner had handed over an order passed by this Court in OMP(T)(COMM) 58/2019 decided on 09.08.2019 between the same parties. In the said case, similar objection had been taken to the

appointment of an Arbitrator who was a serving officer of the respondent Department and the respondent had conceded to the appointment of an independent Arbitrator. Learned counsel for the respondent had sought time to seek instructions in view of this Order.

8. The learned counsel for the respondent has today handed over a letter dated 11.09.2019 whereby he has written instructions to submit that a retired Judge be appointed as a Sole Arbitrator in the matter. Copy of the letter has been handed over to the Court as well as the learned counsel for the petitioner.

9. The letter is taken on record.

10. Having regard to the aforesaid fair stand taken by the learned counsel for the respondent, the present petition is allowed.

11. The mandate of Shri R.P. Tripathi, Sole Arbitrator is terminated and in his place, **Hon'ble Mr. Justice Dipak Misra**, former Chief Justice of India, is appointed as the Sole Arbitrator in the matter.

12. The learned Arbitrator will be paid his fee according to the provisions of the Fourth Schedule appended to the Act or as mutually agreed between the parties.

13. For the convenience of the parties, the address and contact number of the learned Arbitrator is as under:

Hon'ble Mr. Justice Dipak Misra, Former Chief Justice of India
97, Ground Floor, Sukhdev Vihar,
New Delhi-110025
Contact No.: 26935111

14. The learned Arbitrator will file a disclosure/declaration in terms of Section 12 of the Act before proceeding in the matter.
15. The proceedings will resume from the stage at which they are pending.
16. The Registry will dispatch a copy of the order passed today to the learned Arbitrator.
17. The petition is disposed of in the aforesaid terms.
18. Accordingly, the pending applications also stand disposed of.

JYOTI SINGH, J

SEPTEMBER 16, 2019

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