
(2006) 03 DEL CK 0208

In the Delhi High Court

Case No : Arbitration Petition 167 of 2000

Prakash Industries Limited

APPELLANT

Vs

Space Capital Services Limited and Another

RESPONDENT

Date of Decision : 07-03-2006

Acts Referred:

Arbitration and Conciliation Act, 1996 — Section 11, 14(2)

Citation : (2006) 03 DEL CK 0208

Hon'ble Judges : Badar Durrez Ahmed, J

Bench : Single Bench

Advocate : Alok Singh, for the Appellant; Hima Kohli, for the Respondent

Final Decision : Disposed Off

Judgement

Badar Durrez Ahmed, J.—This is a petition u/s 11 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as "the said Act") for appointment of an Arbitrator as well as u/s 14(2) of the said Act for termination of the mandate of the respondent No. 2 as an Arbitrator. Insofar as the question u/s 14(2) is concerned, the counsel for the parties had addressed this court at some length on the previous occasion. The learned counsel appearing for the respondent had taken time to take instructions whether a new arbitrator can be appointed in place of the respondent No. 2 in terms of clause 11.10 of the agreement between the parties. She has since then taken instructions and has a letter addressed to her by the authorised signatory of the respondent No. 1 indicating that Mr. R.K. Handu, Advocate, B-144, Vasant Kunj, New Delhi be appointed as the new Arbitrator for the arbitral proceedings pending between the parties.

2. The learned counsel for the petitioner was satisfied with the fact that the previous Arbitrator, i.e., the respondent No. 2 was being changed, but he made a further request that a former Judge of this court be appointed as an Arbitrator. Considering the fact that the parties are bound by the agreement dated 24.02.1993 which happens to be a lease agreement and the fact that there is a

specific arbitration clause being clause 11.10 which provides for an agreed procedure of appointment of the arbitrator, it would not be appropriate for this court to substitute the agreed procedure by another one unless the parties agree to the same. Accordingly, the said Mr R.K. Handu is appointed as the Arbitrator to take up the arbitral proceedings between the parties in terms of the Arbitration clause contained therein. This is, however without prejudice to the rights and contentions of the parties and in particular the petitioner herein under the said Act in respect of any challenge to the Arbitrator that he may make before the Arbitrator himself. It is also made clear that the pleadings already filed before the previous arbitrator, i.e., respondent No. 2, shall constitute the pleadings before the newly appointed Arbitrator. To ensure that the papers are not weathered, it would be open to the parties to file fresh copies of the pleadings already filed before the learned arbitrator. However, the old record of the arbitral proceedings will be placed before the newly appointed Arbitrator to verify and cross-check the pleadings. The respondent No. 2 is directed to transfer and transmit the records to the newly appointed arbitrator within two weeks of the notice of this order. The newly appointed arbitrator is not bound by any of the orders passed by the previous arbitrator unless there are orders which have been confirmed by the court. Subject to this, he would be free to take any decision in this matter in accordance with law. This petition stands disposed of.

dusty to both the parties.