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IN THE HIGH COURT OF DELHI AT NEW DELHI

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*Date of decision: 08th April, 2024*

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**O.M.P.(T) 1/2024**NORTH EAST CENTRE OF TECHNOLOGY APPLICATION AND  
REACH (NECTAR) ..... PetitionerThrough: Mr. Raghvendra Mohan Bajaj,  
Advocate.

versus

DIVINE BAMBOO MAT MANUFACTURING PVT. LTD. &amp; ANR.

..... Respondents

Through: Mr. Durga Dutt, Mr. Pradeep Yadav,  
Mr. Ratan Singh & Mr. Devendra  
Rao Madhav, Advocates.**CORAM:****HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA****J U D G M E N T (oral)****I.A. 1588/2024 (Exemption)**

1. Allowed, subject to all just exceptions.
2. The application is disposed of.

**O.M.P.(T) 1/2024**

3. The present Petition under Section 14 read with Sections 15 and 11 of the Arbitration and Conciliation Act, 1996 (*hereinafter referred to as the "Act, 1996"*) has been filed for appointment of a substitute Arbitrator.
4. It is submitted in the petition that the petitioner and the respondent entered into the Original Agreement dated 24.11.2008 for Technology Development Assistance for Rs. 1,75,00,000/- in lieu of setting up and developing the project for manufacturing of Bamboo Mat Composites.
5. In furtherance of the Original Agreement dated 24.11.2008, a



Hypothecation Deed dated 14.12.2009 was executed between the parties at New Delhi with regard to the certain present and future moveable assets of the respondent.

6. It is submitted that a Supplementary Agreement (I) dated 22.05.2011 was also executed by which the Original Agreement dated 24.11.2008 was modified in respect of the sanction amount. The respondent had agreed to pay outstanding amount of Rs. 2,00,00,000/- on 10:11 basis in ten half year instalments of Rs. 22,00,000/- between 03.01.2012 to 03.07.2016.

7. Also, a charge was created on 12.07.2011 for a total sum of Rs. 2,20,00,000/- in accordance with Sections 125 to 130 of the erstwhile Companies Act, 1956.

8. It is asserted that another Supplementary Agreement (II) dated 05.10.2013 was entered into between the parties, wherein the respondent agreed to repay the amount of Rs. 2,20,00,000/- according to the modified schedule. However, the asserted that the respondent defaulted in its repayment obligations in terms of Original Agreement dated 24.11.2008 and the Supplementary Agreement (I) dated 22.05.2011 and the Supplementary Agreement (II) dated 05.10.2013.

9. The proposals for settlement were made, but the respondent still could not pay the due amount.

10. As per the Original Agreement dated 24.11.2008, Clause 17 provided for Arbitration and also that the venue of Arbitration shall be New Delhi.

11. It is submitted that the Notice of Invocation of Arbitration dated 12.04.2018 was served upon the respondent, however, the respondent stopped communicating with the petitioner.

12. On 09.08.2019, the petitioner appointed the sole Arbitrator to



adjudicate the disputes *inter se* the parties. Upon commencement of arbitral proceedings, the petitioner filed the Statement of Claim dated 31.08.2019 before the Arbitrator and the respondent filed an updated Statement of Defence, to which the rejoinder was filed on 08.11.2019.

13. The respondent thereafter, filed an Application under Sections 12 and 13 of the Act, 1996 dated 14.12.2019 challenging the appointment of Arbitrator. Since then, no proceedings have taken place thereafter.

14. The limitation for filing the Application under Section 14 of the Act, 1996 for substitution of Arbitrator is three years as has been held in the case of Tarun Kr. Jain, Sole Proprietor vs. M.C.D., 2011 SCS OnLine Del 1789.

15. In the present case, the time limit for the mandate of the Arbitrator expired, as per Section 29A of the Act, 1996, on 23.10.2022 after excluding the COVID-19 Pandemic period i.e., from 23.03.2020 to 28.02.2022.

16. Therefore, the present petition has been filed for appointment of a substitute Arbitrator to adjudicate the disputes *inter se* the parties.

17. Learned counsel for the respondent, on instructions, submits that he has no objection if the present petition is allowed.

18. **Submissions heard.**

19. In view of the submissions made in the present petition which have not been opposed or contested by the learned counsel for the respondent and that no proceedings have been undertaken by the Arbitrator since 14.12.2019 when the Application under Section 12 of the Act, 1996 was made, it is quite evident that the Arbitrator has abandoned the Arbitration proceedings and also has withdrawn from his Office.

20. In these circumstances, the present petition is allowed and Mr. Justice V.K. Jain, Judge (Retd.) Delhi High Court, Mobile No. 9650116555, is



hereby appointed as the substitute Arbitrator to adjudicate the disputes between the parties.

21. The parties are at liberty to raise their respective objections before the Arbitrator.

22. The fees of the learned Arbitrator would be fixed in accordance with the Schedule-IV of the Act, 1996 or as consented by the parties.

23. This is subject to the Arbitrator making necessary disclosure as under Section 12(1) of the Act, 1996 and not being ineligible under Section 12(5) of the Act, 1996.

24. Learned counsels for the parties are directed to contact the learned Arbitrator within one week of being communicated a copy of this Order to them by the Registry of this Court.

25. Accordingly, the present petition is disposed of in the above terms.

**(NEENA BANSAL KRISHNA)  
JUDGE**

**APRIL 08, 2024**  
*S.Sharma*