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

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Date of decision: 24.12.2019

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ARB.P. 816/2019

M/S BILVA KNOWLEDGE FOUNDATION & ANR Petitioners

Through Mr. Joydip Bhattacharya, Mr. Hitesh
Kumar, Mr. Sarath S. Janardanan and
Mr. Subodh Sharma, Advocates.

versus

M/S CL EDUCATE LIMITED

..... Respondent

Through Mr. Vikas Padora, Advocate.

CORAM:

HON'BLE MS. JUSTICE JYOTI SINGH

JYOTI SINGH, J. (ORAL)

1. This is a petition under Section 11(6) of the Arbitration and Conciliation Act, 1996 ('Act') for the appointment of a Sole Arbitrator.

2. An agreement dated 19.11.2018 was executed between the parties.

The said agreement has an Arbitration Clause which reads as under:-

"All disputes and differences of whatsoever nature arising out of this agreement, barring any disputes arising out of infringement of intellectual property rights and/or breach of confidentiality, whether during its term or after expiry thereof or prior termination shall be referred to arbitration in terms of the Arbitration and Conciliation Act 1996, to be conducted by a sole arbitrator who shall be appointed by the Managing Director of CL. The decision of the arbitrator shall be final and binding on the parties. The venue of arbitration shall be Delhi. The Sole arbitrator shall follow summary procedure while adjudicating the dispute(s) referred to him".

3. Some disputes arose between the parties where after the respondent terminated the agreement vide notice dated 27.05.2019. Respondent filed a petition under Section 9 of the Act being O.M.P. (COMM) 125/2019 in District Court, Saket. The Chief Financial Officer of the petitioner vide letter dated 16.09.2019 requested the Managing Director of the respondent to appoint a Sole Arbitrator in accordance with the Arbitration Clause.
4. The Managing Director vide letter 17.09.2019 appointed Ms. Sarita Rout, Advocate as a Sole Arbitrator to adjudicate the disputes between the parties. Consent of the Arbitrator was also sought for adjudicating the disputes.
5. It is the case of the petitioner that Ms. Sarita Rout vide letter dated 20.09.2019 consented to the appointment and the first procedural hearing was held on 28.09.2019.
6. The petition filed by the respondent under Section 9 of the Act was dismissed on 18.10.2019.
7. The review petition is stated to be pending.
8. The present petition has been filed by the petitioner on the ground that in view of the judgment passed by the Supreme Court in ***Perkins Eastman Architects DPC & Anr. V. HSCC (India) Ltd.*** 2019 SCC OnLine SC 1517, the appointment of an Arbitrator by the Managing Director of the respondent as envisaged in the Arbitration Clause is now impermissible. Relevant para of the judgment is extracted hereunder:-

“21. But, in our view that has to be the logical deduction from TRF Limited. Paragraph 50 of the decision shows that this Court was concerned with the issue, “whether the Managing Director, after becoming ineligible by operation of law, is he still eligible to nominate an Arbitrator” The ineligibility referred to therein, was as a result of operation

of law, in that a person having an interest in the dispute or in the outcome or decision thereof, must not only be ineligible to act as an arbitrator but must also not be eligible to appoint anyone else as an arbitrator and that such person cannot and should not have any role in charting out any course to the dispute resolution by having the power to appoint an arbitrator. The next sentences in the paragraph, further show that cases where both the parties could nominate respective arbitrators of their choice were found to be completely a different situation. The reason is clear that whatever advantage a party may derive by nominating an arbitrator of its choice would get counter balanced by equal power with the other party. But, in a case where only one party has a right to appoint a sole arbitrator, its choice will always have an element of exclusivity in determining or charting the course for dispute resolution. Naturally, the person who has an interest in the outcome or decision of the dispute must not have the power to appoint a sole arbitrator. That has to be taken as the essence of the amendments brought in by the Arbitration and Conciliation (Amendment) Act, 2015 (Act 3 of 2016) and recognised by the decision of this Court in TRF Limited.”

9. Learned counsel for the respondent on instructions fairly concedes that in view of the judgment passed by the Apex Court in ***Perkins Eastman (Supra)***, the Court may appoint an Arbitrator to adjudicate the disputes between the parties.
10. With the consent of the parties, Sh.Pradeep Chaddah, Retired District Judge, is appointed as Sole Arbitrator to adjudicate the disputes between the parties.
11. The address and mobile number of the learned Arbitrator is as under:

Mr. Pradeep Chaddah,
Former District and Sessions Judge

R/o 37/29, East Patel Nagar, New Delhi-110008,
Mobile: 9910384665

12. The learned Arbitrator shall give disclosure under Section 12 of the Act before entering upon reference.
13. Fee of the Arbitrator shall be fixed as per Fourth Schedule of the Act.
14. Mandate of Ms. Sarita Rout, present Arbitrator, is terminated.
15. The petition is allowed in the aforesaid terms.

JYOTI SINGH, J

DECEMBER 24, 2019
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