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

+ **O.M.P. (T) (COMM.) 9/2021 & I.A. 862/2021**

M S FAM BHAGAT INFRATECH PVT LTD Petitioner

Through: Mr. Ateendra Saumya Singh,
Mr. Mohd. Wasiq Khan, Mr. Changhez
Khand and Dr. Farrukh Khan, Advs.

versus

MR. ALOK KUMAR AGARWAL & ORS. Respondents

Through: Mr. Nalin Tripathi, Adv.

CORAM:

HON'BLE MR. JUSTICE C. HARI SHANKAR

ORDER (ORAL)

11.05.2021

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(Video-Conferencing)

1. Clauses 9.1 and 9.2 of the agreement, dated 23rd August, 2011, between the petitioner and the respondents in the present case reads as under:

“9.1 That in the event of any dispute or question arising out in between the parties hereto, such dispute shall be referred to the sole arbitration of an Arbitrator to be nominated by the FIRST PARTY upon, whose decision/award shall be final and binding upon the parties hereto. The FIRST PARTY and SECOND PARTY agree not to move or proceed against the award of such arbitrator(s).

9.2 The place of arbitration shall be Delhi/New Delhi.”

2. Clearly, in view of law laid down by the Supreme Court in *Perkins Eastman Architects DPC v. HSCC (India) Limited*¹ and

¹ 2019 SCC OnLine SC 1517

Bharat Broadband Network Ltd. v. United Telecoms Ltd.² as well as Section 12(5) of the Arbitration and Conciliation Act, 1996, read with the VII Schedule thereto, Clause 9.1 is rendered unsustainable in law, as it confers exclusive jurisdiction to one of the parties to the arbitration agreement to appoint the arbitrator.

3. Mr. Nalin Tripathi, learned Counsel for the respondent, submits that he has no objection to another arbitrator being appointed in place of the arbitrator who is in *seisin* of the dispute between the parties.

4. Accordingly, without meaning any disrespect to Hon'ble Mr Justice Rajesh Tandon (retired), the learned Arbitrator who is in *seisin* of the dispute between the parties, this Court is constrained to hold that, as the appointment of the learned Arbitrator has been made in accordance with Clause 9.1 of the Builder's Agreement, the learned Arbitrator is, by operation of the judgment of the Supreme Court in ***Perkins Eastman Architects DPC***¹ and ***Bharat Broadband Network Ltd.***² as well as Section 12(5) of the 1996 Act, rendered *de jure* incapable of performing as an arbitrator, within the meaning of Section 14(1) of the 1996 Act.

5. Accordingly, the mandate of the learned Arbitrator stands terminated.

6. Learned Counsel for the parties have left it to the court to appoint another arbitrator to arbitrate on the dispute.

² (2019) 5 SCC 755

7. Accordingly, this Court appoints Hon'ble Mr. Justice Vinod Goel (Retd.) (Cell No: 9910384637 and Email ID: justicevinodgoel@gmail.com) as the learned arbitrator to arbitrate on the dispute between the parties, in place of Hon'ble Mr Justice Rajesh Tandon.

8. The learned Arbitrator shall be entitled to charge fees in accordance with the IV Schedule to the 1996 Act.

9. The learned Arbitrator shall be entitled to continue the proceedings from the stage at which they stood before Hon'ble Mr. Justice (Retd.) Rajesh Tandon.

10. The learned Arbitrator would also furnish the requisite disclosure under Section 12(2) of the 1996 Act within a week of entering on the reference.

11. This petition stands disposed of in the aforesaid terms.

C. HARI SHANKAR, J.

MAY 11, 2021

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