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IN THE HIGH COURT OF DELHI AT NEW DELHI

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O.M.P. (T) (COMM.) 12/2021

SAMSUNG INDIA ELECTRONICS PRIVATE LTD

..... Petitioner

Through: Dr. Amit George, Adv. with
Mr. Rajeev Kumar, Mr. Amol
Acharya, Mr. Rayadurgam
Bharat and Mr. P. Harold,
Advs.

versus

COMWEN INFORMATION TECHNOLOGIES PVT. LTD.

..... Respondent

Through: None

CORAM:

HON'BLE MR. JUSTICE C. HARI SHANKAR

J U D G M E N T (O R A L)

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19.05.2021

(Video-Conferencing)

1. There has been no appearance in this case on behalf of the respondent, despite service of notice.
2. It is seen that, even before the learned Arbitrator, the respondent has continuously been defaulting in appearance.
3. As such, I have heard Dr. Amit George, learned Counsel for the petitioner, and perused the documents.
4. This is a somewhat peculiar case in which the petitioner, having itself appointed the Arbitrator, a practicing Advocate of this Court,

seeks substitution of the Arbitrator, citing Section 12(5) of the Arbitration and Conciliation Act, 1996 (“the 1996 Act”, in short) read with the VII Schedule thereto and the judgments of the Supreme Court in *Perkins Eastman Architects DPC v. HSCC (India) Ltd.*¹, *Bharat Broadband Network Ltd. v. United Telecoms Ltd.*² and *Haryana Space Application Centre v. Pan India Consultants Pvt. Ltd.*³.

5. The arbitration agreement between the parties reads thus:

“8. Dispute Resolution

a. In case of any dispute or difference (‘Dispute’) between the Parties, the Party seeking to initiate the dispute resolution procedure set out below shall give Notice to the other Party. A meeting or series of meetings (which may include conference calls) shall be held promptly among designated representatives of the Parties, who shall have authority to resolve the dispute or claim, in an attempt to negotiate a resolution of the dispute or claim.

b. In the event a dispute or claim is not resolved by the designated representatives within thirty (30) days from the date the dispute is first raised, then any such dispute or difference of any nature whatsoever, any claim, cross-claim, counter claim or set off or regarding any right, liability, act, omission on account of any of the Parties hereto arising out of or in relation to this Agreement or any matter incidental thereto shall be referred to the sole arbitrator to be nominated by the Director of SIEL.

c. In the event of the arbitrator to whom the matter is originally referred, vacating his office or being unable or refusing to act for any reason, the Director of SIEL at the time of vacation of office or inability or refusal to act, shall appoint another person to act as the

¹ 2019 SCC OnLine SC 1517

² (2019) 5 SCC 755

³ (2021) 3 SCC 103

arbitrator from the stage at which it was left by his predecessor.

d. It is hereby expressly agreed that the powers of the arbitrator appointed in the matter shall include the power to make interim award/ awards as the circumstances of the case may justify; to appoint a receiver, commissioner or custodian, whatever name called to take the possession of property in dispute/unpaid sales during the pendency of the proceedings; and subject to such final order as may be passed by the Arbitrator and shall also have the power to issue such further orders from time to time as he may deem fit.

e. The award of the arbitrator shall be final, conclusive and binding on all the Parties to the Agreement.

f. The venue of the arbitration shall be at New Delhi.

g. The Arbitration shall be conducted in English language and in accordance with the provisions of Arbitration and Conciliation Act, 1996 or any modifications thereof.

h. All such disputes, which may arise out of Arbitration proceedings mentioned hereinabove, are subject to jurisdiction of competent Courts in Delhi only.”

6. Dr. George, learned Counsel for the petitioner, submits that, though the Arbitrator was appointed by his client, as the appointment was made in accordance with Clause 8(b) of the arbitration agreement, which infracts the law laid down by the Supreme Court in *Perkins Eastman Architects DPC¹*, *Bharat Broadband Network Ltd²*. and *Haryana Space Application Centre³*, in order to avoid any controversy at a later stage, his client has itself moved the present

petition for substitution of the Arbitrator.

7. Given the law laid down in *Perkins Eastman Architects DPC¹* and other cases cited *supra* and the mandate of Section 12(5) of the 1996 Act read with the VII Schedule thereto, it is obvious that the Arbitrator could not be appointed unilaterally by the petitioner. The appointment of the Arbitrator presently in *seisin* of the disputes is, therefore, not sustainable and is accordingly set aside.

8. It is made clear that, by doing so, this Court does not even remotely seek to question the impartiality or competence of the Arbitrator who was seized with the disputes. His mandate unfortunately stands terminated only because of the statutory provision contained in Section 12(5) and the law laid down by the Supreme Court in that regard.

9. Learned Counsel for the petitioner submits that, as the amount in dispute is relatively small, the matter may be referred to Delhi International Arbitration Centre (DIAC), which could appoint an arbitrator suitably competent to deal with the matter.

10. Accordingly, this petition is disposed of by referring the parties to the Delhi International Arbitration Centre (DIAC), who would appoint an appropriate arbitrator, to arbitrate on the disputes between the parties.

11. Let a copy of this order be e-mailed to learned Counsel for the

parties as well as to the parties themselves at their respective e-mail
Ids as soon as it is ready, for compliance.

12. The petition stands disposed of as above.

C. HARI SHANKAR, J.

MAY 19, 2021

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