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

+ **O.M.P. (T) (COMM.) 29/2021**

NAVIN KUMAR GUPTA Petitioner

Through: **Ms. Rajasree Ajay, Adv.**

versus

NEW DELHI MUNICIPAL COUNCIL Respondent

Through: **Mr. Anil Grover, Adv.**

CORAM:

HON'BLE MR. JUSTICE C .HARI SHANKAR

ORDER (ORAL)

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08.09.2021

(Video-Conferencing)

C .HARI SHANKAR, J.

O.M.P. (T) (COMM.) 29/2021

1. This petition essentially challenges the unilateral appointment of the arbitrator by the respondent *vide* a communication dated 23rd January, 2020. By the said communication, the respondent NDMC appointed a retired IAS Officer to arbitrate on the disputes between the petitioner and the respondent.

2. The appointment of the arbitrator by NDMC is in line with Clause 25 of the Agreement between the parties, which envisages arbitration by an arbitrator to be appointed by the Chairperson, NDMC. However, in the wake of decisions of the Supreme Court in *Bharat Broadband Network Ltd v. United Telecoms Ltd¹, Perkins*

¹ (2019) 5 SCC 755

*Eastman Architects DPC v. HSCC (India) Ltd*² and *TRF Limited v Energo Engineering Project Limited*³, the right to appoint the arbitrator cannot be unilaterally conferred on any one party to the Agreement.

3. As such, the appointment of the arbitrator *vide* the aforesaid letter dated 23rd January, 2020 cannot sustain in law. It has necessarily to be set aside.

4. Learned Counsel for the parties are agreeable to the matter being referred to the Delhi International Arbitration Centre (DIAC) to appoint an appropriate arbitrator to arbitrate on the disputes.

5. Accordingly, this petition is disposed of by referring the disputes between the parties to the DIAC. The DIAC would appoint a suitable arbitrator to arbitrate on the disputes.

6. Ms. Rajasree Ajay, learned Counsel for the petitioner, submits that as the dispute is technical in nature, it would be appropriate if the arbitrator is well conversant with engineering practice. The DIAC would keep this fact in mind while appointing the arbitrator.

7. The arbitration would take place under the aegis of DIAC and would abide by the rules and regulations of DIAC.

² (2020) 20 SCC 760

³ (2017) 8 SCC 377

8. The arbitrator would also be entitled to fees in accordance with the schedule of fees maintained by the DIAC.

9. The petition stands disposed of in the above terms.

C. HARI SHANKAR, J.

SEPTEMBER 8, 2021

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