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

+ **ARB.P. 482/2021**

PUSHKARRAJ CONSTRUCTION PVT. LTD. Petitioner

Through: Mr.Kamal Gupta, Mr.Nipun
Jain & Mr.Sparsh Aggarwal, Advs.,

versus

UNION OF INDIA

..... Respondent

Through: Mr.Praveen Kumar Jain and
Ms. Sneh Bairwa, Advs.

CORAM:

HON'BLE MR. JUSTICE C. HARI SHANKAR

ORDER (O R A L)

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08.07.2021

(Video-Conferencing)

1. This is a petition under Section 11 of the Arbitration & Conciliation Act, 1996 ('the 1996 Act') for appointment of an arbitrator to arbitrate on the disputes between the parties.

2. Consequent to acceptance of the bid of the petitioner, a contract was executed between the petitioner and the respondent for construction of residential accommodations at Mamun, Punjab, Damtal, Himachal Pradesh and Basoli, Jammu & Kashmir. Clause 60 of the General Conditions of Contract (GCC) provided for resolution of disputes by arbitration. It reads thus:

"60. Arbitration.

All disputes between the parties to the contract (other than those for which the decision of the DG MAP or any other person is by the contract expressed to be final and binding) shall, after written notice by either party to the contract to the other of them, be referred to the sole arbitration of serving officer having degree in Engineering or equivalent or having passed Final/Direct Final Examination of Sub Division II of Institute of Surveyors (India) recognized by the Govt. of India to be appointed by the Engineer-in-Chief, Army Headquarters, New Delhi or in his absence, the officer officiating as Engineer-in-Chief or Director General of Works, if specifically delegated in writing by Engineer-in-Chief, Army Headquarters, New Delhi whose decision shall be final, conclusive and binding. The Arbitration shall be governed by Arbitration and Conciliation Act, 1996 "

3. Consequent to the aforesaid contract on 10th June, 2014, a work order was issued by the respondent to the petitioner. According to the petitioner, the work was satisfactorily completed by it, and the respondent, nevertheless, effected unwarranted deductions from the final bill of the petitioner. Further, the respondent also wrote to the petitioner alleging that certain amounts had been paid to the petitioner in excess, and calling upon the petitioner to refund the same.

4. These facts, *inter alia*, resulted in disputes between the parties, the arbitrability of which is not contested.

5. The petitioner wrote on 25th January, 2021, to the respondent, calling on the respondent to appoint a sole arbitrator for adjudication of the aforesaid disputes. A panel of three arbitrators was also suggested by the petitioner in the said letter. The respondent replied, on 24th February, 2021, seeking consent of the petitioner to waiver of

the applicability of Section 12(5) of the 1996 Act, as Clause 60 of the GCC was squarely in the teeth of the said provision, read with the law laid down by 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 (P) Ltd.*³. This request was declined by the petitioner, vide response dated 8th March, 2021.

6. The resulting situation was that the parties have been unable to agree on the arbitrator to arbitrate on the disputes. In view of the law laid down by the Supreme Court in *Perkins Eastman Architects DPC*¹, *Bharat Broadband Network Ltd.*² and *Haryana Space Application Centre*³, read with Section 12 (5) of the 1996 Act, it is obviously not permissible for the respondent to appoint the arbitrator to arbitrate on the disputes.

7. The resulting imbroglio has cast the responsibility of appointing the arbitrator on this Court, in view of Section 11(6) of the 1996 Act.

8. The claims, Mr. Gupta submits, are in the region of around ₹ 19 crores.

9. As such, this Court appoints Hon'ble Mr J. R. Midha, a learned retired Judge of this Court as the arbitrator to arbitrate on the aforesaid disputes. The contact details of the learned Arbitrator are as under:

¹ 2019 SCC OnLine SC 1517

² (2019) 5 SCC 755

³ (2021) 3 SCC 103

Cell No. : 9717495003

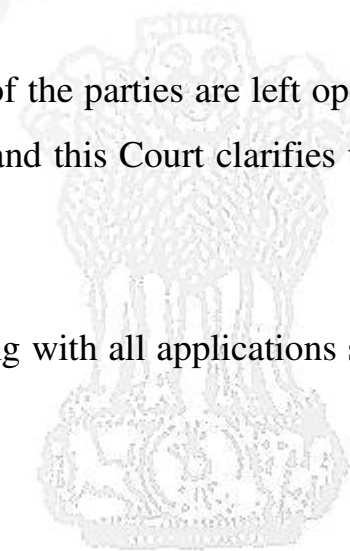
E-mail ID : jrmidha@gmail.com

10. The learned Arbitrator would be entitled to charge fees in accordance with the Fourth Schedule to the 1996 Act.

11. The learned Arbitrator is requested to furnish the requisite disclosure under Section 12(5) of the 1996 Act within a week of entering on reference.

12. All contentions of the parties are left open to be agitated before the learned Arbitrator and this Court clarifies that it has expressed no opinion thereon.

13. The petition along with all applications stand disposed of in the aforesaid terms.



C. HARI SHANKAR, J.

JULY 8, 2021/kr