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

% ***Date of decision: 23.07.2021***

+ ARB.P. 611/2021

M/S BSCPL INFRASTRUCTURE LTD.Petitioner

Through: Mr. S.K. Chandwani, Advocate

Versus

UNION OF INDIA & ANR. Respondents

Through: Mr. Chetan Sharma, ASG
With Mr. Ripudaman Bhardwaj,
CGSC, Mr. Amit Gupta, Mr. Sahaj
Garg & Mr. Kushagra Kumar,
Advocates

CORAM:
HON'BLE MR. JUSTICE SURESH KUMAR KAIT

J U D G M E N T (oral)

The hearing has been conducted through video conferencing.

1. Petitioner- M/s BSCPL Infrastructure Ltd. has preferred the present petition under Section 11 sub-section (6) of Arbitration and Conciliation Act, 1996 seeking appointment of an Arbitrator to settle the disputes with respondents, as mentioned in Para-7 of the present petition. A direction is also sought to respondents to produce original Agreement dated 31.03.2017.
2. The crux of the case in hand, according to petitioner, is that on 15.02.2017, respondent No.1- Chief Engineer (AF) WAC invited

applications from the Contractors for issue of tender for the work relating to “Resurfacing of Runway and Aircraft Operating Areas at AF Station Chandigarh” and vide letter dated 15.02.2017, authorized the petitioner to tender for the above work and thereafter, petitioner submitted the tender. Respondent No.1, Accepting Officer, for and on behalf of President of India, vide letter No.83022/CHD/283/E8 dated 31.03.2013 issued by their Chief Engineer, communicated the petitioner that its tender had been accepted for a contract sum of Rs.433,92,71,325.30. The period fixed for completion of the work was 28 months commencing from 05.04.2017 and ending with 04.08.2019.

3. In the meanwhile, the parties entered into amendment No.2, dated 29.03.2019 2019 to the aforesaid Agreement dated 31.03.2017 for referring the matters in dispute in the first place to the Dispute Resolution Board (DRB) by incorporating a Condition 50 “DISPUTE RESOLUTION BOARD (DRB)” as part of Special Conditions. The Contract in Condition 70 of the General Conditions of Contract contained in I.A.F .W.-2249 provides for settlement of disputes by arbitration.

4. According to petitioner, upon receipt of the letter of acceptance dated 31.03.2017, petitioner mobilized its organization and deployed at site the

necessary manpower, materials, machinery and other facilities and commenced the works so as to complete before the due date according to the contractual conditions. However, it was completed on 27.05.2020. But since respondent No.1 failed and neglected in releasing various amounts due for payment, petitioner referred such matters in dispute to Dispute Resolution Board for decision thereon.

5. The Dispute Resolution Board after hearing the parties rendered its decision on 05.02.2021. Being dissatisfied therewith, petitioner issued a notice under Clause 6(b) on page 29 of the Agreement read with Condition 70 of the General Conditions of Contract contained in I.A.F.W.-2249 and thereby referred the disputes for arbitration and requested the appointing authority, i.e. respondent No.2 for reference of the resultant disputes to arbitration and for appointment of a sole Arbitrator. Upon failure of respondent No.2 to appoint Arbitrator in terms of agreement within 30 days of petitioner's Notice dated 15.02.2021. Thus, petitioner has approached this Court seeking appointment of an Arbitrator to resolve the present dispute falling under Commercial Courts Act, 2015.

6. Mr. Ripudaman Bhardwaj, learned Central Government Standing Counsel, has opposed the claim of petitioner while submitting that in terms

of agreement between the parties, the Arbitrator has to be appointed by respondent No.2 and therefore, this petition be not allowed.

7. Both sides have been heard and record of this case has been perused.

8. Petitioner has invoked arbitration vide notice dated 15.02.2021. According to petitioner, the claim raised in the present petition is of approximately Rs.39,34,40,117.73 besides 18% per annum interest and cost of arbitration. The arbitration agreement between the parties and invocation of arbitration are not disputed by the respondents. However, contention of respondents that the Arbitrator has to be appointed by respondent No.2 is rejected, as no party can be permitted to unilaterally appoint an Arbitrator, as the same would defeat the purpose of unbiased adjudication of dispute between the parties.

9. The Hon'ble Supreme Court in ***Perkins Eastman Architects DPC & Anr. vs. HSCC (India) Ltd.*** 2019 SCC Online SC 1517 has categorically stated that *"in cases where 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."*

10. The afore-noted dictum of Hon'ble Supreme Court in *Perkins Eastman (Supra)*, has been followed by Coordinate Benches of this Court in *Proddatur Cable Tv Digi Services Vs. Siti Cable Network Limited 2020 SCC OnLine Del 350* and *VSK Technologies Private Limited and Others Vs. Delhi Jal Board 2021 SCC OnLine Del 3525* in unequivocal terms.

11. Concurring with the decisions as noted above, the present petition is allowed.

12. Accordingly, **Justice KG Balakrishnan, former Chief Justice of India (Mobile: 9717266700)** is appointed the Sole Arbitrator to adjudicate the dispute between the parties. The arbitration shall be conducted under the Delhi International Arbitration Centre (DIAC).

13. The fee of the Arbitrator shall be in accordance with the Schedule of Fees prescribed under the Delhi International Arbitration Centre (DIAC) (Administrative Cost and Arbitrators Fees) Rules, 2018.

14. The learned Arbitrator shall ensure compliance of Section 12 of Arbitration and Conciliation Act, 1996 before commencing the arbitration.

15. With aforesaid directions, the present petition is accordingly disposed of.

(SURESH KUMAR KAIT)
JUDGE

JULY 23, 2021/r