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

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Date of decision: 11.08.2021

- (i) + **ARB.P. 707/2021**
- (ii) + **ARB.P. 708/2021**
- (iii) + **ARB.P. 711/2021**

RBCL PROJECTS PRIVATE LIMITEDPetitioner
Through: Mr. Sandeep Bajaj, Mr. Soayib
Qureshi & Mr. Ajay Sharma,
Advocates

Versus

BPTP LIMITEDRespondent
Through: Mr. Nitish K. Sharma, Advocate

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. The above captioned petitions have been filed under the provisions of Section 11(6) of Arbitration and Conciliation Act, 1996.
2. Pertinently, the dispute *inter se* parties pertains to different work orders issued by the respondent to petitioner with regard to different projects.
3. The above captioned first petition [ARB.P. 707/2021] pertains to

work order dated 13.12.2016 and 19.01.2017. The second captioned petition [ARB.P. 708/2021] pertains to work order dated 06.04.2015 and the third captioned petition [ARB.P. 711/2021], pertains to work order dated 13.09.2016. According to petitioner, these work orders contain an arbitration clause in the event of dispute between the parties.

4. According to petitioner, after a dispute arose between the parties, , vide notice dated 09.02.2021, petitioner invoked the arbitration clause and proposed the name of an Arbitrator, however, respondent went ahead and unilaterally appointed sole Arbitrator, which is bad in law. Hence, petitioners have approached this Court seeking appointment of an Arbitrator.

5. Pertinently, existence of work orders and arbitration clause; dispute between the parties and invocation of arbitration by the petitioner vide notice dated 09.02.2021, is not disputed by learned counsel for the respondent.

6. Upon hearing learned counsel for the parties and on perusal of the petition and material placed on record, this Court finds that 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. It has so been said in view of pertinent observations of the Hon'ble Supreme Court in

Perkins Eastman Architects DPC & Anr. vs. HSCC (India) Ltd. 2019 SCC Online SC 1517 wherein it has been 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.*”

7. 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.

8. In view of the above, these petitions are allowed. Accordingly, **Justice Pratibha Rani (Retd) (Mobile: 9910384626)** is appointed the sole Arbitrator to adjudicate the dispute between the parties. The arbitration shall be conducted under the Delhi International Arbitration Centre (DIAC). The fee of the Arbitrator shall be in accordance with the schedule of fees prescribed under the Delhi International Arbitration Centre (DIAC) (Internal Management) Rules and Delhi International Arbitration Centre

(Administrative Cost and Arbitrators' Fees) Rules, 2018.

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

10. Needless to say, all issues are left open for agitation by the parties and consideration by the learned Arbitrator.

11. With aforesaid directions, the above captioned three petitions are accordingly disposed of.

(SURESH KUMAR KAIT)
JUDGE

AUGUST 11, 2021

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