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

% ***Date of decision: 23.11.2021***

+ **ARB.P. 967/2021**

M/S THIRD WAVE SERVICES

..... Petitioner

Through: Mr. Sandeep Sharma,
Mr.AmitChoudhary, Ms.Kanchan
Semwal & Mr.Gurjas S. Narula,
Advocates

Versus

M/S SELENE CONSTRUCTIONS LIMITED & ANR.

..... Respondents

Through: Mr. Dhruv Mohan, Advocate for
respondent No.2

CORAM:

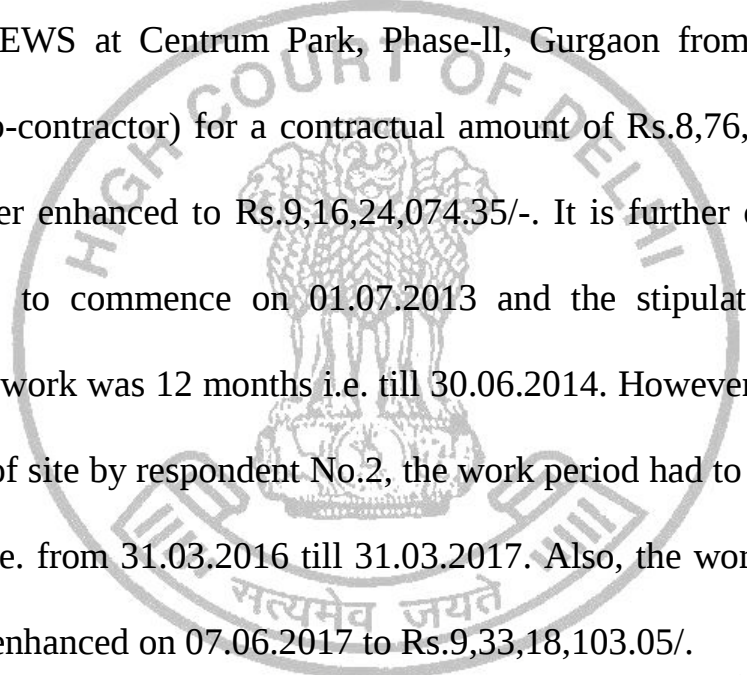
HON'BLE MR. JUSTICE SURESH KUMAR KAIT

J U D G M E N T (oral)

1. The present petition has been filed by petitioner seeking appointment of a Sole Arbitrator under the provisions of Section 11(6) of the Arbitration and Conciliation Act, 1996.

2. Petitioner, a private limited company, claims to be registered under the Micro Small and Medium Enterprises Development (MSMED) Act, 2006, claims to be engaged in the diverse businesses pertaining to providing permanent Civil, electrical and Mechanical infrastructure.

3. According to petitioner, respondent No.1 is a public limited company engaged in real estate activities, who develops offices, housing, hotels and other industrial projects. Respondent No.2 is also engaged in real estate development services.

4. Petitioner claims to have received a work order No. 3228105854 dated 12.07.2013 for work of internal electrical works of Building G1,2,3, K1,2,3, B & EWS at Centrum Park, Phase-II, Gurgaon from respondent No.2 (as a sub-contractor) for a contractual amount of Rs.8,76,05,494.61/-, which was later enhanced to Rs.9,16,24,074.35/-. It is further claimed that the work was to commence on 01.07.2013 and the stipulated time for completion of work was 12 months i.e. till 30.06.2014. However, due to late handing over of site by respondent No.2, the work period had to be extended time to time i.e. from 31.03.2016 till 31.03.2017. Also, the work order was amended and enhanced on 07.06.2017 to Rs.9,33,18,103.05/-.

5. At the hearing, learned counsel for petitioner has submitted that due to implementation of the Goods and Services Tax Laws, the terms and conditions of work had to be reassessed and revised vide post GSI Work Order No. 0330110049 and under the amended contract, respondent No.1 became the employer and petitioner the contractor, instead of respondent

No.2. Further submits that owing to failure on the part of respondents in adhering to the terms and conditions of the agreement, the work was delayed and time ceased to be essence of the contract and therefore, work to the tune of Rs.2,96,52,939.32, as against the awarded value of Rs.9,18,72,965.59, could be executed by the petitioner.

6. It is further submitted by learned counsel that respondent vide its email dated 22.03.2018, admitted the claim of petitioner, however, respondent has agreed to pay only Rs.70,00,000/-, whereas in the 'completion certificate' issued by respondent No.1, the work executed by petitioner has been mentioned as "good". It is also averred on behalf of petitioner, that against the final bill dated 05.04.2019 amounting to Rs.1,32,50,052.21, respondent No.1 approved amount of Rs.1,05,94,359.07 and out of the said amount too, amount of Rs.56,70,074.00 only was released to petitioner till 14.02.2020 and out of the remaining amount of Rs. 49,24,285.07, further amount of Rs.11,83,311/ was released by respondent No.1, leaving the balance amount of Rs. 37,40,974.07 still unpaid.

7. Petitioner claims to have sent various e-mails to the respondent No.1 for clearance of outstanding dues, however, upon failure to make the payment, petitioner invoked arbitration vide notice dated 10.06.2021. In

response to the aforesaid notice dated 26.06.2021, respondent unilaterally appointed its Arbitrator, which is impermissible in law and hence, the present petition has been filed.

8. To the contrary, learned counsel appearing on behalf of respondents has opposed the present petition while submitting that the claims raised by the petitioner in the present petition are frivolous and this petition deserves to be dismissed. However, learned counsel has not disputed invocation of arbitration vide Notice dated 10.06.2021 and also that any dispute *inter se* parties have to be resolved in terms of Clause-37(b) of the amended post GST Work Order No. 330110049.

9. Upon hearing learned counsel appearing from both the sides this Court finds that disputes between the parties are required to be adjudicated by an Arbitrator in terms of Clause-37(b) of the amended post GST Work Order No. 330110049. Vide notice dated 10.06.2021, petitioner has invoked arbitration, however, respondent has gone ahead appointing Arbitrator of its choice, which in the considered opinion of this Court cannot be permitted.

10. The Hon'ble Supreme Court's in ***Perkins Eastman Architects DPC & Anr. vs. HSCC (India) Ltd.*** 2019 SCC Online SC 1517, has categorically stated that *no single party can be permitted to unilaterally appoint the*

Arbitrator, as it would defeat the purpose of unbiased adjudication of dispute between the parties. The aforesaid decision in ***Perkins (Supra)*** has been followed by a Coordinate Bench of this Court in ***Proddatur Cable TV Digi Services Vs. Citi Cable Network Limited: (2020) 267 DLT 51.*** Thus, the Arbitrator either has to be appointed with the consensus of the parties or by this Court.

11. Concurring with the decisions as noted above, the present petition is allowed. Accordingly, **Ms. Madhrima Panwar Mridul, Advocate (Mobile 9810175151)** is appointed sole Arbitrator to adjudicate the dispute between the parties.

12. The fee of the learned Arbitrator shall be governed by the Fourth Schedule of the Arbitration and Conciliation Act, 1996.

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

14. A copy of this order be sent to the learned Arbitrator for information.

(SURESH KUMAR KAIT)
JUDGE

NOVEMBER 23, 2021

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