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

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*Date of decision: 22.11.2021*

+ ARB.P. 1055/2021

GBK PROJECT PVT. LTD. ....Petitioner

Through: Mr. S.W. Haider, Advocate

Versus

UNION OF INDIA THROUGH THE GENERAL  
MANAGER

.....Respondent

Through: Mr. Ashok Singh, Advocate

**CORAM:**

**HON'BLE MR. JUSTICE SURESH KUMAR KAIT**

**J U D G M E N T (oral)**

1. By Way of present petition, petitioner is seeking appointment of an independent Arbitrator under the provisions of Section 11 of the Arbitration and Conciliation Act, 1996 read with Section 151 CPC.

2. Petitioner-company claims to be involved in the business of construction and Railway contracts, who vide acceptance letter dated 26.09.2016 of respondent was awarded work pertaining to "Balance work of quarters at Asoati Faridabad, construction of station building, power cabin, RRI and other station building, extension of platforms, retaining wall, development of circulating area, drainage arrangements in yards and other

allied works at different location in between AST and Jn cabin TKD in C/W 4th line" for Rs. 12,64,61 ,022.97 (Rupees Twelve Crore Sixty Four Lac Sixty One Thousand Twenty Two and Ninety Seven Paise only). The work was to be completed within stipulated period of 15 months i.e. 25.12.2017.

3. According to petitioner, petitioner had made all necessary arrangements, however, work could not be completed by the stipulated time i.e. 25.12.2017 due to several failures on the part of the respondent and so, the period for completion of work was last extended upto 01.12.2019. However, during execution of the work, various claims, clarifications and disputes arose between the parties, which were brought to the notice of concerned department of respondent, but instead of finding out any solution and acting oblivious to the genuine difficulties faced by the petitioner, respondent issued several notices to the petitioner with a view to escape/wriggle out from its contractual obligations and vide notice dated 23.09.2019 the respondent terminated the contract.

4. It is averred by the petitioner that respondent was under the obligation to serve 48 hours notice upon the petitioner before terminating the contract as mandated and so, petitioner vide its letter dated 23.07.2021, invoked the arbitration clause as contained under clause 64 of the General Conditions of

the Contract.

5. At the hearing, learned counsel for the petitioner has submitted that petitioner claims amount to Rs.4,76,34,485/- (Rupees Four Crore Seventy Six Lac Thirty Four Thousand Four Hundred Eighty Five Only) against the respondent and therefore, the present petition be allowed.

6. On the other hand, learned counsel appearing for respondent has disputed the averments made by the petitioner and has submitted that in response to petitioner's letter dated 23.07.2021 invoking arbitration, respondent in its reply dated 23.08.2021 had sought waiver of Section 12(5) of the Act, however, it was not replied to by the petitioner. Further submits that in terms of Clause-64(3) of the General Conditions of Contract, if the total value of claim does not exceed Rs.25,00,000, , the Arbitral Tribunal shall consist of a Sole Arbitrator who shall be a Gazetted Officer of Railway not below JA Grade, nominated by the General Manager otherwise, the Arbitral Tribunal shall consist of a Panel of three Gazetted Railway Officers not below JA Grade or 2 Railway Gazetted Officers not below JA Grade and a retired Railway Officer, retired not below the rank of SAG Officer, as the arbitrators.

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

8. Pertinently, invocation of arbitration vide letter dated 23.07.2021 by the petitioner is not disputed. Though the present petition has been opposed by learned counsel for respondent, however, it is not disputed that any dispute *inter se* parties has to be resolved through arbitration in terms as contained under clause 64 of the General Conditions of the Contract. However, contention of learned counsel for respondent that appointment of Arbitrator has to be made in terms of Clause-64(3) of the General Conditions of Contract, is rejected in view of Hon'ble Supreme Court's decision in ***Perkins Eastman Architects DPC & Anr. vs. HSCC (India) Ltd.*** ***2019 SCC Online SC 1517***, wherein it has been 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.

9. In view of the above, the present petition is, therefore, allowed and **Mr. Justice (Retd) I.S.Mehta, former Judge of Delhi High Court (Mobile: 9910384616)** is appointed the Sole Arbitrator to adjudicate the

dispute between the parties.

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

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

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

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

**(SURESH KUMAR KAIT)**  
**JUDGE**

**NOVEMBER 22, 2021**

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