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

% *Date of decision: 10.12.2021*

+ **O.M.P. (T) (COMM.) 128/2021**

M/S ERA INFRA ENGINEERING LTD. Petitioner
Through: Mr. Udit Seth, Advocate

Versus

DELHI STATE INDUSTRIAL AND INFRASTRUCTURE
DEVELOPMENT CORPORATION LTD Respondent
Through: Mr. Sarthak Chillar, Advocate

CORAM:
HON'BLE MR. JUSTICE SURESH KUMAR KAIT

J U D G M E N T (oral)

1. The above captioned petitions have been filed under the provisions of Section 14 and 15 of the Arbitration and Conciliation Act, 1996 seeking appointment of a substituted Arbitrator.
2. Petitioner claims to be engaged in the business of infrastructure development and construction, who had submitted its offer to a tender published by respondent –DSIIDC for construction of 1272 Dwelling unit with external Development & Electrification of project, which was issued by the petitioner vide letter of Acceptance dated 23.01 .2008. Pursuant thereto, a Contract was executed between the parties on 28.02 .2008. Thereafter

certain disputes arose between the parties and respondent invoked arbitration vide letter dated 09.06. 2017. Further, respondent vide its letter dated 11.07.2017 appointed the Sole Arbitrator to adjudicate the disputes, who entered into reference vide letter dated 14.07 .2017 and fixed the preliminary date of hearing on 28.08.2017. However, petitioner came to know in 2018 that the Arbitrator so appointed was on the panel of respondent- DSIIDC. Petitioner has cited various reasons for not being able to pursue the case thereafter.

3. Learned counsel appearing on behalf of respondent has opposed the present petition while submitting that in terms of arbitration Clause -25 (ii) of the Contract Agreement, appointment of Arbitrator has to be done from the panel of Arbitrators of DSIIDC, which is vehemently opposed by learned counsel for petitioner.

4. On the asking of this Court as to how many Arbitrators are available on the panel of respondent, learned counsel for respondent has produced before this Court a List of Arbitrators on the panel of DSIIDC which are eleven in number.

5. It is the case of petitioner that the learned Arbitrator so appointed in this case has also been appointed in six other cases besides the present one

and has therefore, approached this Court for appointment of sole Arbitrator for a just and fair redressal of the disputes.

6. 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.*”

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, the present petition is allowed. Accordingly, **Ms. Justice (Retd.) Pratibha Rani (Mobile: 9910384626)** is appointed the sole Arbitrator to adjudicate the dispute between the parties.

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

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

11. The present petition and pending application, if any, are accordingly disposed of.

(SURESH KUMAR KAIT)
JUDGE

DECEMBER 10, 2021

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