

Mr. Ankur Pahade for the petitioner.

Ms. Madhavi Ayyappan, i/by. Talekar & Associates for respondents.

CORAM : MANISH PITALE, J
DATE : 20th OCTOBER, 2022

P.C. :

By this petition filed under Section 11 of the Arbitration and Conciliation Act, 1996, the petitioner has prayed for appointment of a sole arbitrator for adjudication of disputes that have arisen between the parties. Certain names have also been suggested on behalf of the petitioner.

2. The petitioner and respondent No.1 entered into a sub-contract agreement, whereby the petitioner was to partly construct road for respondent No.1, in the project handed over by respondent No.2. Clause 37 of the said agreement pertains to resolution of disputes by arbitration and it reads as follows:

“37. DISPUTES:

In case any dispute or difference should arise between the parties, whether in respect of quality of material used by the contractors or work done or in respect of delay in completion of works or in respect of payment of extra work required to be done and so executed or in respect

of measurement of work done or in respect of delay of payment to the contractors or touching the interpretation, fulfillment of any of the terms of these presents or any other matter arising out of or in connection with these presents or the carrying out of the work, shall be resolved at the office of the Contractor first and if the same will not be resolved the same shall be referred to arbitrator. The sole arbitrator will be the chief engineer of the Employer. The proceedings of the arbitrators shall be recorded in English, a copy whereof shall be furnished to each party. The provisions of the Arbitration and Conciliation Act, 1996 so far as applicable and are not inconsistent or repugnant to these presents, shall apply to this reference to arbitration. The award of the arbitrators shall be final and binding on the parties and the parties, their executors and administrators shall on their respective parts obey, abide by the award and shall not challenge on any ground excepting fraud or collusion or error apparent on the face of the award.

3. The petitioner invoked the said arbitration clause by communication dated 12th February, 2021. Respondent No.1 sent a reply on 5th March, 2021, suggesting names of three arbitrators. But, since there was disagreement on the name of a sole arbitrator who could be appointed, the petitioner was constrained to file the present petition.

4. Perusal of the above-quoted arbitration clause would show that it specifies that the Chief Engineer of the respondent No.1 would be the sole arbitrator. But, by operation of Section 12(5) of the said Act, the said authority is barred by law to act as the sole arbitrator. This position of law is laid down by the Hon'ble Supreme Court in its judgment in **Perkins Eastman Architects DPC and another v/s. HSCC (INDIA) Limited**, (2020) 20 SCC 760 : 2019 SCC Online SC 1517. The parties concede to the said position of law.

5. In this backdrop, there was some discussion between the parties as to the place of arbitration. The arbitration clause does not provide for a specific place. The parties eventually agreed for the appointment of a former Judge of this Court as the sole arbitrator.

6. Accordingly, Justice Shalini Phansalkar-Joshi, former Judge of this Court, is appointed as the sole arbitrator. The contact details of the learned Arbitrator are as follows:-

Hon'ble Smt. Dr. Justice Shalini Phansalkar-Joshi
Bungalow No.12,
Bhagya Chintamani Nagar,
Poud Road, Kothrud,
Pune-411 038
Mob.: 96571 88676

7. Learned arbitrator is requested to submit her consent and disclosure statement in terms of Sections 11(8) and 12(1) of the aforesaid Act within four weeks from today to the Registrar (Judicial) of this Court. The fees of the arbitrator shall be in terms of Schedule IV of the said Act.

8. The parties to appear before the learned arbitrator on 30th November, 2022. The statement of claim shall be filed within three weeks of appearance of the parties before the learned Arbitrator. The learned arbitrator may decide the place and venue of arbitration. All questions are left open to be decided by the learned arbitrator. The fees of the learned Arbitrator shall be fixed in terms of the Fourth Schedule to the aforesaid Act.

9. Petition stands disposed of.

(MANISH PITALE, J)

Priya Kambli