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

% ***Date of decision: 07.02.2022***

+ **ARB.P. 54/2022**

+ **ARB.P. 56/2022**

KTECH ENGINEER BUILDERS CO. PRIVATE LIMITED

..... Petitioner

Through: Mr. Nikhil Chawla, Mr. Vikas Mishra
& Mr. Sanchit Gawri, Advocates

Versus

UNION OF INDIA

..... Respondent

Through: Mr. Ruchir Mishra, Mr. Sanjiv Kumar
Saxena, Mr. Mukesh Kumar Tiwari &
Mr. Ramneek Mishra, Advocates

CORAM:

HON'BLE MR. JUSTICE SURESH KUMAR KAIT

J U D G M E N T (oral)

1. The above captioned two petitions have been filed by the petitioner under Section 11 (5) & (6) of the Arbitration and Conciliation Act, 1996 seeking appointment of Arbitrator for adjudication of disputes with respondent.

2. Since the parties to the present petition are similar, therefore, with the consent of learned counsel for the parties, these petitions have been heard together and are being disposed of by this common judgment.

ARB.P. 54/2021 & 56/2021

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3. According to petitioner, for Completion of Balance Works for Construction of Dwelling Units including Allied Services for Officers and ORs at Commissariate Road II Line and Salt Lake (Kolkata), tenders were invited by respondent and after completion of process, petitioner had entered into two Contracts, one bearing CA No. DGMAP/PH-II/PKG-19/1(A) (R&C)/02 of 2014-2015 i.e. the Salt Lake Construction Contract (henceforth referred to as the “first contract”) and second, bearing CA No.: DG MAP/PH-II/PKG-19/1 (B)(R&C)/03 of 2014-2015 i.e. Dakshineswar Construction Contract (henceforth referred to “second contract”) . The first contract in question is the subject matter of first captioned petition (ARB.P. 54/2022) and the second contract is the subject matter of second captioned petition (ARB.P. 56/2022).

4. Petitioner claims that the work under the first contract was completed on 15.03.2018 and for the second contract got completed on 30.04.2018. Also, the defect liability period of two years, as stipulated in the contracts, expired on 14.03.2020 and 29.04.2020 for the first and second contract respectively. Under these contracts, petitioner was required to raise the final bill within three months of completion of the work, however, on account of finalization of deviation order by the respondent and certain lapse on the



part of Project Manager, the same could not be raised in time.

5. It is claimed by petitioner that vide letter dated 13.11.2018, petitioner submitted the bills for both the contracts and respondent was under the obligation to clear the final bill within six months from the receipt of the same in terms of Clause-56 of the GCC i.e. by 30.04.2019, however, respondent neither cleared the final bill nor provided any concrete reason for delay in doing so. Therefore, petitioner vide notices dated 27.03 .2021 and 03.05.2021 invoked arbitration in terms of Clause- 60 of the GCC. Since, no reply to these notices was sent by the petitioner, thus, these petitions have been filed.

6. During the course of hearing, learned counsel for petitioner has submitted that the disputes between the parties have to be resolved through arbitration in term of Clause-60 of the GCC, however, in view of Hon'ble Supreme Court's decision in ***Perkins Eastman Architects DPC & Anr. Vs. HSCC (India) Ltd.*** 2019 SCC Online SC 1517 it cannot be done and so, this Court may appoint an Arbitrator. Learned counsel further submits that though these petitions relate to different work orders between the same parties, however, for recovery of final bills, common communications and letters have been exchanged and, therefore, sole Arbitrator be appointed to



adjudicate the disputes.

7. Mr. Ruchir Mishra, learned counsel appearing on behalf of respondent has disputed the claims raised in these petitions, however, has fairly conceded that the disputes are arbitrable. Learned counsel has also consented to the proposal of learned counsel for petitioner that sole Arbitrator be appointed by this Court to adjudicate the disputes arising in these petitions, as it would save time and money of the parties. However, learned counsel submits that he has instructions from the department/UOI to pray this Court that only retired Supreme Court/ High Court Judge be appointed as Arbitrator.

8. Pertinently, execution of two afore-noted Contracts between the parties is not disputed. It is also not disputed that in terms of Clause-60 of GCC, differences, if any, between the parties are to be resolved through arbitration. The relevant Clause-60 reads as under:-

“60 Arbitration

All disputes, between the parties to the contract (other than those for which the decision of the DG MAP or any other person is by the contract expressed to be final and binding) shall, after written notice by either party to the contract to the other of them, be referred to the sole arbitration of serving officer having degree in Engineering or equivalent or having passed Final/Direct Final



Examination of Sub Division II of Institution of Surveyors (India) recognized by the Govt of India to be appointed by the Engineer-in- Chief, Army Headquarters, New Delhi or in his absence, the officer officiating as Engineer-in-Chief or Director General of Works if specifically delegated in writing by Engineering in-Chief: Army Headquarters. New Delhi whose decision shall be final, conclusive and binding. The Arbitration shall be governed by the Arbitration and Conciliation Act, 1996.”

9. Further, invocation of arbitration by the petitioner vide notices dated 27.03.2021 and 03.05.2021 is also not disputed. However, the Hon'ble Supreme Court in *Perkins Eastman Architects (Supra)*, 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”. Applying this ratio of law to the cases in hand, respondent cannot be permitted to appoint Arbitrator of its choice and it has rightly so been conceded by counsel appearing on behalf of respondent. Also, this Court finds force in the submission of both the sides that for speedy and economic resolution of disputes, sole Arbitrator be appointed in these petitions.

10. Accordingly, these petitions are allowed and **Mr. Justice (Retd.) Swatanter Kumar (Mobile: 9560413636)** is appointed the sole Arbitrator



to adjudicate the dispute between the parties.

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

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

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

FEBRUARY 07, 2022

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(SURESH KUMAR KAIT)
JUDGE