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

% ***Date of decision: 20.01.2022***

+ **ARB.P. 1180/2021**

EVAM CONSTRUCTIONS PVT LTD. Petitioner

Through: **Mr. Manish Kumar, Advocate**

Versus

WEI GROW HOTEL CONCEPTS PVT LTD KYLIN & ORS.

..... Respondent

Through: **Nemo.**

CORAM:
HON'BLE MR. JUSTICE SURESH KUMAR KAIT

JUDGMENT (oral)

1. The present petition has been filed by the petitioner under Section 11 of the Arbitration and Conciliation Act, 1996 seeking appointment of Arbitrator for adjudication of disputes with the respondents.
2. At the outset, learned counsel for petitioner has submitted that defendants No.2 & 3 are proforma parties and the present petition is pressed against defendant No.1 only.
3. As per office report, defendant No.1 is served through ordinary process, however, none has appeared its behalf. It seems respondent No.1 has nothing to oppose in the present petition.

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4. Petitioner claims to be a Contractor, who has implemented civil and interior related works at Kylin Restaurant, 309 Ambience Mall, Vasant Kunj, New Delhi, i.e. the premises of respondent in terms of Work Order dated 10.08.2018.

5. According to petitioner, pursuant to the aforesaid Work Order dated 10.08.2018, petitioner commenced the work on the said premises and on 14.09.2012 petitioner submitted a proforma of works to the respondent and certain disputes arose with regard to payment of Rs.1,67,41,398.04/- between the parties. Thereafter, by virtue of notice of demand dated 21.02.2011 petitioner invoked arbitration and in terms of arbitration clause called upon Mr. Sumeet Nath, Architect of respondent-company to act as sole Arbitrator. However, since the learned Arbitrator did not commence the arbitration proceedings, petitioner sent e-mails dated 19.03.2011 and 17.07.2012 reminding him of delay in arbitration proceedings. Thereafter, on 23.07.2012 respondent also sent a letter to the Arbitrator to commence arbitration proceedings and the learned Arbitrator vide its letter dated 21.08.2012 intimated the parties the first date of hearing as 04.09.2012.

6. According to petitioner, on 14.09.2012 petitioner submitted its claims to the tune of Rs.1,67,41,398.04/- with the learned Arbitrator, however,



thereafter arbitration did not proceed further. Petitioner also claims to have given reminders to the learned Arbitrator but to no avail. Thereafter, petitioner sent a legal notice dated 12.03.2019 to the respondent terminating the mandate of learned Arbitrator i.e. Mr. Sumeet Nath and appointed Mr. Pradeep Gaur, Advocate in his substitution. Since the petitioner again did not receive any reply to the said legal notice dated 12.03.2019, a petition [OMP (I) comm. No- 6/2019] before the learned trial court for substitution of the Arbitrator, which was dismissed on 05.02.2021 holding that in view of Section 29A (4) of Arbitration Act there was no ground to terminate the mandate of arbitral tribunal and also that under the provisions of Section 11 of the Act, remedy lies before this Court. Hence, the present petition.

7. Upon hearing and perusal of petition and material placed on record, this Court finds that Clause-14 of the Work Order dated 10.08.2012 contemplates that disputes between the parties shall be referred to designated Architect / Consultant of the respondent. Further, petitioner by virtue of notice of demand dated 21.02.2011 invoked arbitration and also appointed the Architect of respondent as Arbitrator, who commenced the arbitral proceedings, however, arbitral proceedings did not progress and thereby, the arbitral tribunal failed to publish the Award within the time



stipulated of twelve months under the provisions of Section 29A of the Arbitration and Conciliation Act, 1996. Pertinently, by virtue of Hon'ble Supreme Court's decision in *Perkins Eastman Architects DPC & Anr. Vs. HSCC (India) Ltd.* 2019 SCC Online SC 1517 the aforesaid Clause-14 of the Work Order dated 10.08.2012 has become null and void, as in the said decision 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*". In view of decision in *Perkins Eastman (Supra)*, even the proposal of petitioner appointing Mr. Pradeep Gaur, Advocate as Arbitrator is also thereby rejected. Furthermore, by virtue of Clause-15 of the Work Order dated 10.08.2012, the jurisdiction of all legal matters shall be Delhi.

8. Accordingly, this Court appoints **Mr. Sukhdev Singh, DHJS (Retd.) (Mobile: 9910384682)** 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

JANUARY 20, 2022

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