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ORDER SHEET
AP/133/2023
IN THE HIGH COURT AT CALCUTTA
ORDINARY ORIGINAL CIVIL JURISDICTION
ORIGINAL SIDE

SREI EQUIPMENT FINANCE LTD
VS
KMC CONSTRUCTION LTD AND ORS

BEFORE:

The Hon'ble JUSTICE SHEKHAR B. SARAF

Date: 5th April, 2023.

Appearance:

Mr. Swatarup Banerjee, Adv.

Mr. Sariful Haque, Adv.

Mr. Rajib Mullick, Adv.

Mr. Biswaroop Ghosh, Adv.

Mr. Debnath Ghosh, Adv.

Mr. Sarosij Dasgupta, Adv.

Mr. Biswaroop Mukherjee, Adv.

Mr. Steven S. Biswas, Adv.

The Court: This is an application under Section 14 read with Section 11 of the Arbitration and Conciliation Act. In this particular case a unilateral appointment has been made by the petitioner himself in the year 2021. However, on further legal advice being taken, the petitioner realised that this appointment is bad in law as it is hit by the judgment in *Perkins Eastman Architects DPC v. HSCC (India) Limited* reported in (2020) 20 SCC 760 and *TRF Limited v. Energo Engineering Projects Ltd.* reported in (2017) 8 SCC 377.

Furthermore, it also appears that the said Arbitrator is arbitrating for the petitioner in almost 57 other matters.

In light of the same, I am also of the view that the petition should be allowed and the mandate of the Arbitrator should be terminated and a new Arbitrator should be appointed. However, it is to be noted that the Arbitrator has continued for a period of two years and therefore the said arbitration should be continued from the present stage at which it was before the erstwhile Arbitrator.

In light of the same, I appoint Hon'ble Justice Ashim Kumar Banerjee, (retired), [Mobile No.9830929720/9432327416], as Arbitrator in this matter. The appointment is subject to submission of declaration by the Arbitrator in terms of Section 12(1) in the form prescribed in the Sixth Schedule of the Act before the Registrar, Original Side of this Court within four weeks from today.

Let this order be conveyed to the Arbitrator by the Registrar, Original Side forthwith.

I make it clear that any order that was passed by the erstwhile Arbitrator after filing of this application shall be treated as non-est in law.

Since parties have already put in their pleadings etc. the new Arbitrator is directed to continue the said arbitration from the stage of filing of affidavits of the petitioner.

I make it clear that the parties should not seek unnecessary adjournment and the Arbitrator should act expeditiously in accordance with the Arbitration and Conciliation Act.

Arbitrator should charge his fees as per Schedule IV of the Arbitration Act.

AP/133/2023 is accordingly disposed of.

(SHEKHAR B. SARAF, J.)