

CR-2556-2020 (O&M)

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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CR-2556-2020 (O&M)
Reserved on : 14.03.2023
Date of decision : 11.04.2023

M/s DLF Ltd.Petitioner

Versus

Dharmendra Dhawan and Ors.Respondents

CORAM : HON’BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Kunal Dawar, Advocate for the petitioner.

Mr. Dharmendra Dhawan, respondent No.1 in person.

ALKA SARIN, J.

The present revision petition has been preferred against the impugned order dated 07.10.2020 (Annexure P-1) passed by the Civil Judge (Junior Division), Gurugram dismissing the application under Sections 5 and 8 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as the ‘Arbitration Act’) only on the ground that as per the arbitration clause the matter is to be referred to an arbitrator who shall be the Company Secretary of the Company and hence the arbitration agreement itself is invalid.

Learned counsel for the petitioner would contend that merely because the arbitration clause envisaged the appointment of the Company Secretary as an arbitrator itself would not vitiate the arbitration agreement between the parties.

Per contra, respondent No.1 appearing in person has contended that there is no arbitration clause and it is only when he was promoted as Senior Project Engineer - Civil at Level L1B that the standard terms and conditions applicable to the employees of the company contained an arbitration clause. It is the contention of respondent No.1 appearing in person that at the time of the appointment of the respondent there was no arbitration clause.

Heard.

Undoubtedly, as per the law laid down by the Hon'ble Supreme Court in the cases of **Perkins Eastman Architects DPC & Anr. Vs. HSCC (India) Ltd. [(2020) 20 SCC 760]** and **Bharat Broadband Network Limited Vs. United Telecoms Limited [(2019) 5 SCC 755]**, unilateral appointment of an arbitrator is vitiated under Section 12(5) of the Arbitration Act. A person who has an interest in the outcome or decision of the dispute must not have the power to appoint a sole arbitrator. However, merely because the arbitration clause envisages that the Company Secretary shall be the arbitrator would not render the arbitration clause or the agreement invalid. The agreement/clause is not one-sided and can be invoked by either party.

In view of the above, the present revision petition is allowed. The impugned order dated 07.10.2020 is set aside. The matter is remanded to the Trial Court to decide the application afresh, in accordance with law, keeping in mind the law laid down by the Hon'ble Supreme Court. The respondent No.1 can raise all the pleas before the Trial Court. Nothing mentioned in this order shall be construed by the Trial Court to have any bearing on the merits of the case.

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Disposed off accordingly. Pending applications, if any, also stand disposed off.

11.04.2023

Yogesh Sharma

(ALKA SARIN)
JUDGE

NOTE : Whether speaking/non-speaking: Speaking
Whether reportable: YES/NO