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

% *Date of Decision: 28th August 2023*

+ O.M.P. (T) (COMM.) 52/2023 & I.A. 12920/2023

BHARAT AGGARWAL AND ORS Petitioners

Through: Mr. N.K. Aggarwal, Ms. Sanjana Antil, Ms. Amanpreet Kaur and Ms. Nupur Sachdeva, Advocates

versus

MUKESH MIGLANI AND ANR Respondents

Through: Mr. Pradeep Dewan, Senior Advocate with Mr. K.K. Mukhija, Mr. Anupam Dhingra and Ms. Reeta Yagnik, Advocates

**CORAM:
HON'BLE MS. JUSTICE JYOTI SINGH**

JUDGEMENT

JYOTI SINGH, J. (ORAL)

1. Present petition has been filed under Sections 14 and 15 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as the '1996 Act') for setting aside the impugned order dated 15.04.2023 passed by the learned sole Arbitrator, namely, Sh. Amod K. Dalela and for termination of the mandate of the learned sole Arbitrator.

2. It is the case of the Petitioners that a partnership firm in the name of M/s Star Creations Inc. was formed on 19.06.2015 between Petitioner No.1, Respondent No.1 and one Sh. Saurabh Anand vide unregistered Partnership Deed dated 19.06.2015. Some loan transactions took place between the parties and disputes having arisen with respect to the control of the business and the loan, litigation



started. Respondent No.1 filed a suit for recovery in September, 2019 against the Petitioners by allegedly misusing the cheques given. Petitioners appeared in the suit upon service of summons and raised a plea that there was an Arbitration Agreement between the parties in the unregistered Partnership Deed and the subsequent Reconstitution Deed by filing an application under Section 8 of the 1996 Act. During the pendency of the said application, Respondent No.1 unilaterally appointed a sole Arbitrator of his choice, namely, Sh. Amod K. Dalela, without the consent and knowledge of the Petitioners. In this light, the Trial Court did not adjudicate upon the application under Section 8 of the 1996 Act and simply referred the parties to Arbitration.

3. Learned counsel for the Petitioners submits that since the sole Arbitrator was unilaterally appointed, as soon as the Petitioners joined the proceedings, they filed an application under Section 16(2) of the 1996 Act on 09.01.2023, to which reply was filed by Respondent No.1. However, the application was dismissed by the learned Arbitrator vide a detailed order dated 15.04.2023 in which certain other issues were also decided.

4. Contention raised on behalf of the Petitioners is that the unilateral appointment of the learned Arbitrator is in violation of the judgment of the Supreme Court in ***Perkins Eastman Architects DPC and Another v. HSCC (India) Ltd., (2020) 20 SCC 760*** and the sole Arbitrator is *de jure* ineligible to act in light of Section 12(5) of the 1996 Act. Reliance is also placed on the judgments of this Court in ***Proddatur Cable TV Digi Services v. Siti Cable Network Limited, 2020 SCC OnLine Del 350*** and ***V. Technologies Private Limited v.***



Delhi Jal Board, 2021 SCC OnLine Del 3525. It is further urged that once the Arbitrator is *de jure* ineligible to proceed, the impugned order which deals with other issues such as the claims being allegedly time barred, etc. is without jurisdiction and needs to be set aside and the mandate of the Arbitrator requires to be terminated.

5. Mr. Pradeep Dewan, learned Senior Counsel appearing on behalf of the Respondents, on instructions, submits that in view of the binding dictum of the Supreme Court in ***Perkins Eastman Architects DPC and Another (supra)*** as well as the other judgments of this Court relied upon by the Petitioner, Respondents have no objection if the mandate of the learned sole Arbitrator is terminated and an Arbitrator is appointed by this Court provided that the arbitration proceedings are conducted under the aegis of Delhi International Arbitration Centre ('DIAC').

6. Accordingly, with the consent of the parties, the following directions are passed:-

- (a) Mr. Saurabh Seth, Advocate (Mob. No. 9811393402), is appointed as a sole Arbitrator to adjudicate the disputes between the parties. The arbitration proceedings shall be conducted under the aegis of DIAC;
- (b) Learned Arbitrator is requested to furnish a declaration in terms of Section 12(1) of the 1996 Act prior to entering upon reference;
- (c) Fees of the learned Arbitrator shall be determined in terms of the Fourth Schedule of the 1996 Act.

7. Learned Senior Counsel for the Respondents and learned counsel for the Petitioner further agree that since the Arbitrator whose



mandate is terminated was *de jure* unable to perform his functions, the impugned order dated 15.04.2023 passed by the Arbitrator cannot sustain being without jurisdiction and *non est*. Impugned order dated 15.04.2023 is accordingly set aside. The newly appointed Arbitrator shall proceed from the stage of entering upon reference and neither of the parties will rely on any findings or observations in the order dated 15.04.2023.

8. Petition along with pending application is disposed of with the aforesaid directions.

JYOTI SINGH, J

AUGUST 28, 2023/kks