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

+ **O.M.P.(I) (COMM.) 17/2024 & I.A. 784/2024**

HULE CONSTRUCTIONS PVT LTD. Petitioner

Through: Counsel (appearance not given).

versus

NATIONAL HIGHWAY AUTHORITY OF INDIA & ORS.

..... Respondents

Through: Mr. Santosh Kumar, Standing
Counsel with Mr. Adithya Ramni and
Mr. Kushagara Aman, Advocates.

CORAM:

HON'BLE MR. JUSTICE ANUP JAIRAM BHAMBHANI

ORDER

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16.01.2024

I.A. No. 785/2024

Exemption granted, subject to just exceptions.

Let requisite compliances be made within 01 week.

Application stands disposed of.

O.M.P.(I) (COMM.) 17/2024

After making some brief submissions on this petition under section 9 of the Arbitration & Conciliation Act 1996 ('A&C Act'), learned counsel appearing for the petitioner submits that the petitioner would be satisfied if a sole arbitrator is appointed to adjudicate upon the disputes that have arisen with the respondents from Contract Agreement dated 07.06.2023 and the present petition is placed before the learned Sole Arbitrator to be treated as an application under section 17 of the A&C Act.



2. Learned counsel for the petitioner has drawn the attention of this court to clause 27 of the agreement, which comprises the arbitration agreement between the parties; and contemplates reference of disputes between them to arbitration by a sole arbitrator in accordance with the A&C Act; with arbitration to be held at New Delhi. The arbitration agreement also provides that the agreement shall be subject to the exclusive jurisdiction of courts at New Delhi.
3. Though the arbitration agreement also contemplates that the sole arbitrator shall be appointed by the Chairman of the National Highways Authority of India ('NHAI'), that provision of the arbitration clause is, in any case, untenable in law in view of the decision of the Supreme Court in *Perkins Eastman Architects DPC vs. HSCC (India) Ltd*¹.
4. Furthermore, it is noticed that the arbitration agreement also contemplates that parties would go through a conciliation process before being referred to arbitration. However, as the record would show, the petitioner has already requested for such conciliation *vide* communication dated 05.12.2023, also setting-out in that communication details of the claims made against the respondents, but to no avail.
5. Counsel for the petitioner informs the court that thereafter the petitioner has also issued notice dated 15.01.2024 invoking arbitration and seeking appointment of an arbitrator. A copy of the invocation notice has been handed-up in court; and is taken on record.

¹ (2020) 20 SCC 760



6. Mr. Santosh Kumar, learned Standing Counsel has appeared on behalf of the respondents, on advance copy.
7. Upon a conspectus of the case, this court is satisfied that there is a valid and subsisting arbitration agreement between the parties, with territorial jurisdiction vesting in the courts of law at New Delhi; and that the petitioners had initiated pre-arbitration conciliation *vide* communication dated 05.12.2023; and have thereafter invoked arbitration *vide* notice dated 15.01.2024; and further that *ex-facie* none of the disputes sought to be raised appear to be non-arbitrable.
8. Considering the circumstances obtaining in the matter, without issuing formal notice on this petition, this court is persuaded to accept the submission made on behalf of the petitioner.
9. In order to expedite adjudication of the disputes on merits, the petition is allowed; and Hon'ble Mr. Justice Talwant Singh, former Judge, Delhi High Court (Cellphone No. : +91 9910384653) is appointed as the learned Sole Arbitrator to adjudicate upon the disputes between the parties that are stated to have arisen from Contract Agreement dated 07.06.2023.
10. The learned Sole Arbitrator would proceed with the arbitral proceedings subject to furnishing requisite disclosures as required under section 12 of the A&C Act; and in the event there is any impediment to the appointment on that count, the parties are given liberty to file an appropriate application in this court.
11. The learned Sole Arbitrator shall be entitled to fee in accordance with Fourth Schedule to the A&C Act; or as may otherwise be agreed to between the parties and the learned Sole Arbitrator.



12. Parties shall share the arbitrator's fee and arbitral costs, equally.
13. All rights and contentions of the parties in relation to the claims/counter-claims are kept open, to be decided by the learned Sole Arbitrator on their merits, in accordance with law
14. Parties are directed to approach the learned Sole Arbitrator appointed within 10 days.
15. A copy of this order be communicated by the Registry to the learned Sole Arbitrator.
16. Furthermore, the petitioner is permitted to place the present petition under section 9 of the A&C Act before the learned Sole Arbitrator, to be treated by the learned Sole Arbitrator as an application under section 17 of the A&C Act; and to be decided in accordance with law.
17. The petition stands disposed of in the above terms.
18. Other pending applications, if any, also stand disposed of.

ANUP JAIRAM BHAMBHANI, J

JANUARY 16, 2024/uj