



2024:DHC:5715



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**+ **ARB.P. 185/2024****ALUBUILD ENGINEERS PVT LTD**Petitioner
Through: **Mr. Ashish Chauhan, Adv.**

versus

NEO DEVELOPERS PVT LTDRespondent
Through: **Mr. Jitender Chaudhary and**
Ms. Shilpa Chohan, Advs.**CORAM:**
HON'BLE MR. JUSTICE C. HARI SHANKAR**ORDER (ORAL)**

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01.08.2024

1. This is a petition under Section 11 (6) of the Arbitration and Conciliation Act 1996¹, for reference of the dispute between the parties to arbitration.

2. The dispute arises in the context of a Contract Agreement dated 8 October 2018 executed between the respondent and the petitioner. The agreement envisages resolution of dispute by arbitration, *vide* the following Clause:

“ARBITRATION:

If at any time, during the progress of the Work or after completion, termination or non-performance of the Contract in accordance to its terms, any dispute/difference arise between the parties hereto in relation to work or in connection with the interpretation or construction of the Contract, the same shall be resolved through co-operation and consultation.

If the said disputes etc. are not settled by cooperation and

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consultation, the same shall be referred to the independent sole arbitrator to be nominated by the Client, whose decision shall be final and binding on the parties. The Contractor shall not challenge the award of the Sole Arbitrator on the ground that the Arbitrator has been appointed by the Client.

Performance under the Contract shall continue even during arbitration proceedings and no payment due or payable by one party to the other shall be withheld unless any such payment is or forms a part of the subject matter of the arbitration proceedings.

Subject to aforesaid, the provisions of Arbitration and Conciliation Act 1996 or any statutory modification or re-enactment thereof and the rules made there under shall apply to the Arbitration proceedings under this clause.

The party invoking arbitration shall specify the disputes to be referred to arbitration under this clause together with the amounts claimed or any other remedy demanded in respect of each such dispute.

Since the registered office of the Company is situated at New Delhi, the venue of arbitration shall be at New Delhi. The language of Arbitration shall be in English.

The award of the Arbitrator shall be final, conclusive and binding on both the parties to this Contract.

The expenses of arbitration shall be shared by both the Parties equally unless stated otherwise by the Arbitrator in any Arbitration proceeds.”

3. Though the agreement contemplates appointment of the arbitrator unilaterally by the respondent, such a clause is unworkable in view of the law laid down by the Supreme Court in *Perkins Eastman Architects DPC v. HSCC (India) Ltd*², *Bharat Broadband Network Ltd v. United Telecoms Ltd*³ and *TRF Ltd v. Energo Engineering Projects Ltd*⁴.

² (2020) 20 SCC 760

³ (2019) 5 SCC 755

⁴ (2017) 8 SCC 377

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4. The petitioner addressed a notice to the respondent under Section 21 of the 1996 Act on 20 September 2023 for reference of the dispute to arbitration.
5. As the petitioner and the respondent could not arrive at an agreement on this score, the present petition has been preferred under Section 11(6) of the 1996 Act for reference of the dispute to arbitration.
6. Mr. Jitender Chaudhary, learned Counsel for the respondent, has no objection and prays that arbitration may be directed to be conducted under the aegis of the Delhi International Arbitration Centre (DIAC).
7. Accordingly, this Court appoints Mr. Chiranjiv Kumar, Advocate (Tel. 9810657124) as the arbitrator to arbitrate on the dispute between the parties.
8. The arbitration would take place under the aegis of the DIAC and would abide by its rules and regulations.
9. The arbitrator shall be entitled to charge fees as per the Schedule of Fees maintained by DIAC.
10. The learned Arbitrator is requested to file requisite disclosure under Section 12(2) of the 1996 Act within a week of entering on the reference.

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11. This Court has expressed no opinion on any of the contentions. All contentions of facts and law shall remain open to be urged by both sides in the arbitral proceedings.

12. The respondent would also be at liberty to prefer counter claim, if so advised.

13. This petition is disposed of in the aforesaid terms.

C. HARI SHANKAR, J.

AUGUST 1, 2024

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Click here to check corrigendum, if any

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