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

+ ARB.P. 297/2024

NARESH KUMAR BANSAL

..... Petitioner

Through: Mr. Subodh K. Pathak, Mr. Adil
and Mr. Basak, Advocates.

versus

CHIEF ENGINEER, CENTRAL PUBLIC WORKS

DEPARTMENT NEW DELHI & ANR.

..... Respondents

Through: Mr. Arnav Kumar, CGSC with Mr.
Chetanya Kapoor, Advocate.

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versus

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DEPARTMENT NEW DELHI & ANR.

..... Respondents

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Chetanya Kapoor, Advocate.

CORAM:

HON'BLE MR. JUSTICE PRATEEK JALAN

ORDER

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06.03.2024

1. The petitioner has filed these two petitions, under Section 11 of the Arbitration and Conciliation Act, 1996 [“the Act”], for appointment of arbitrators for adjudication of disputes under two agreements between the parties. The agreements are undated and deal with contracts placed upon



the petitioner for upgradation of flats in residential quarters at Sadiq Nagar and Andrews Ganj respectively. Both the agreements contain arbitration clauses [Clause 25 in each case].

2. Disputes having arisen between the parties, the arbitration clauses were invoked by the petitioner *vide* a communication dated 28.03.2023. After some correspondence between the parties, the respondent ultimately appointed an arbitrator on 20.12.2023. The arbitrator has informed the parties that he has entered into the reference.

3. The contention of the petitioner in these petitions is that the unilateral appointment of the arbitrators is contrary to Section 12 of the Act in terms of the judgments of the Supreme Court in *TRF Limited vs. Energo Engineering Projects Limited* [(2017) 8 SCC 377] and *Perkins Eastman Architects DPC & Anr. vs. HSCC (India) Limited* [(2020) 20 SCC 760], and other judgments which follow them. Learned counsel for the petitioner submits that any award rendered by a such an arbitrator would be a nullity in terms of the decision of Division Bench of this Court in *Govind Singh vs. Satya Group Pvt. Ltd.* [(2023) SCC Online Del 37] and *Ram Kumar vs. Shriram Transport Finance Co. Ltd.* [2022 SCC OnLine Del 4268]. He, therefore, seeks appointment of an independent arbitrator by the Court.

4. Mr. Arnav Kumar, learned Standing Counsel for the respondent, has taken instructions and does not dispute that the appointment of the arbitrator by the respondent was unilateral. However, he submits that the pre-arbitration procedure contemplated in the agreement was not undertaken. In my view, this objection is unmerited. The respondent had itself appointed an arbitrator by its communication dated 20.12.2023. All



that is now sought is for an independent arbitrator to be appointed instead, under both the agreements.

5. The objection to unilateral appointment, asserted by the petitioner, is in line with the judgments of the Supreme Court and this Court. The Court has clearly held that an award passed by an unilaterally appointed arbitrator is a nullity in the eyes of law. In view of the above, the petitions are liable to be allowed, and an independent arbitrator appointed. Learned counsel for the parties suggest that a common arbitrator, with an Engineering qualification, may be appointed in both the cases, and that the arbitration may be conducted under the aegis of Delhi International Arbitration Centre, Delhi High Court, Shershah Road, New Delhi-110503 [“DIAC”].

6. In view of the above, the petitions are disposed of by referring the disputes between the parties under the agreements in question to arbitration of under the aegis of DIAC. DIAC is requested to nominate an arbitrator from its panel, being a person with an Engineering qualification.

7. The arbitration proceedings will be governed by the Rules of DIAC, including as to remuneration of the learned Arbitrator.

8. The learned Arbitrator is requested to furnish a declaration under Section 12 of the Act, prior to entering upon the reference.

9. The arbitration, under both the agreements, will be before a common arbitrator but will be treated as two separate references for all purposes.

10. Learned counsel for the petitioner states that a third petition, under Section 11 of the Act, in respect of another similar dispute with regard to



a different location, is lying in defects with the Registry. He submits that a common arbitrator may be appointed in that case also. This is a submission that can be made before the Court once the said petition is listed.

11. It is made clear that all rights and contentions of the parties on maintainability of the claims and on merits are left open for adjudication by the learned Arbitrator.

12. The petitions are disposed of in terms of the above.

PRATEEK JALAN, J

MARCH 6, 2024
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