



2024:DHC:5908



\$~37

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**+ **O.M.P. (T) (COMM.) 25/2023****PRECITECH ENCLOSURES SYSTEMS PVT LTD****THROUGH ITS DIRECTOR PARVEEN KOHLIPetitioner****Through: Mr. L.B. Rai, Mr. Krishan
Kumar Arora, Mr. Shivam Bedi, Advs.****versus****RUDRAPUR PRECISION INDUSTRIES THROUGH ITS****PARTNER AMIT RAJPUT AND ORSRespondents****Through: Mr. Abdhesh Chaudhary and
Ms. Geetanjali Setia, Advs. for R-1 and 2
Mr. Zaryab Jamal Rizvi, Ms. Firdouse Qutb
Wani, Advocates for R-3 and 4****CORAM:****HON'BLE MR. JUSTICE C. HARI SHANKAR****JUDGMENT (ORAL)**

%

06.08.2024

1. This petition seeks termination of the mandate of Dr. Pankaj Garg who was arbitrating on the dispute between the parties. Termination is sought on the ground that Dr. Garg was appointed unilaterally by Respondents 1 and 2 without taking the consent of the petitioner.

2. It is trite that an Arbitral Tribunal cannot be unilaterally constituted and has to be constituted by agreement of parties, failing which the Court has to be moved in appropriate proceedings.

3. Mr. Rizvi, learned Counsel for the Respondents 3 and 4, fairly



2024:DHC:5908



accepts that the appointment of Dr. Garg is not sustainable in law as it was unilateral.

4. Accordingly, the mandate of Dr. Pankaj Garg as the arbitrator arbitrating on the dispute between the parties stands terminated.

5. The petition seeks, additionally, appointment of a substitute arbitrator by this Court.

6. According to me, such a relief cannot be directly sought. Had the original arbitrator being appointed after following the protocol envisaged in the arbitral Agreement and after a notice under Section 21 of the 1996 Act was issued by one party to the other, and had the arbitrator later been rendered *de jure* or *de facto* unable to continue, the Court could have appointed a substitute arbitrator. In the present case, however, no valid notice under Section 21 has been issued before Dr. Garg was appointed as an arbitrator.

7. Section 15(2) envisages, on the termination of the mandate of the arbitrator in *seisin* of the dispute, a substitute arbitrator being appointed “according to the rules that were applicable to the appointment of the arbitrator being replaced”.

8. Clause 20 of the Rent Agreement between the parties, in terms of which arbitration is sought, reads thus:

“20. The courts at Rudrapur Uttarakhand, India shall have exclusive jurisdiction to determine any question issue dispute or claim between the parties including but not limited to any application to be made under the arbitration and conciliation Act,



2024:DHC:5908



1996 as amended and re-enacted from time to time. The arbitrator will be appointed on mutual consent of both the parties.

9. Thus, Clause 20 envisages arbitration in terms of the 1996 Act. Section 21 of the 1996 Act, in turn, envisages arbitration as commencing on the issuance of a notice under Section 21 from one party to the other requesting that the dispute be referred to arbitration.

10. No such letter of request was ever issued by either party to the other and the respondents had unilaterally appointed Dr. Garg as the arbitrator.

11. Thus, Clause 20 of the Rent Agreement read with Section 21 of the 1996 Act would require, before any court interferes under Section 11(6) of 1996 Act, for either party to issue a notice, to the other, invoking the arbitration clause and seeking reference of the dispute to arbitrator.

12. This Court cannot, therefore, straightway proceed to appoint a substitute arbitrator.

13. Mr. Rai, learned Counsel for the petitioner, therefore, restricts his prayer in the present petition to the termination of the mandate of Dr. Garg and submits that he would thereafter proceed to take steps to in accordance with law.

14. I may note, here, that Mr. Rizvi, learned Counsel for the Respondents 3 and 4 also raised issues of territorial jurisdiction,



2024:DHC:5908



pointing out that Clause 20 conferred exclusive jurisdiction on courts at Rudrapur, Uttarakhand even in respect of the arbitral proceedings.

15. Mr. Rai, *per contra*, relies on a communication dated 4 April 2022 addressed by one of the partners of Respondents 1 and 2, to the petitioner consenting to arbitration in Delhi and to his client's response to the said email whereby consent is sought was granted.

16. Mr. Rizvi draws attention to his response *vide* e-mail dated 14 December 2022.

17. This Court does not express any opinion on this aspect as the stage for examining the issue has not arisen.

18. Resultantly, the mandate of Dr. Pankaj Garg is terminated.

19. The petition stands disposed of accordingly.

C. HARI SHANKAR, J.

AUGUST 6, 2024

dsn

[Click here to check corrigendum, if any](#)