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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **ARB.P. 367/2023 & I.A. 6359/2023**
M/S NPS FACILITIES THROUGH SOLE PROPRIETOR MR
VIKAS SINGH Petitioner
Through: Mr. Faisal Mohammed, Advocate.
versus
RCC INFRA VENTURES LTD Respondent
Through: Mr. Kanishk Aggrawal, Advocate.
CORAM:
HON'BLE MR. JUSTICE ANUP JAIRAM BHAMBHANI
ORDER
% **07.03.2024**

By way of the present petition under section 11(6) of the Arbitration & Conciliation Act 1996 ('A&C Act'), the petitioner seeks appointment of a Sole Arbitrator to adjudicate upon the disputes that are stated to have arisen with the respondent from Work Order dated 03.07.2019.

2. Notice on this petition was issued on 17.04.2023; consequent upon which reply dated 20.09.2023 has been filed by the respondent.
3. Mr. Faisal Mohammed, learned counsel for the petitioner has drawn the attention of this court to (latter) clause 6 of Work Order dated 03.07.2019, which comprises the arbitration agreement, and contemplates reference of disputes between the parties to arbitration in accordance with the A&C Act; with the 'place' of arbitration being at New Delhi.
4. As per the record, the petitioner invoked arbitration *vide* Notice dated 03.11.2022, to which the respondent has not sent any reply.
5. The arbitration agreement between the parties contemplates appointment of an arbitrator unilaterally by the respondent. Be that as



it may, there is no cavil with the proposition that in view of the judgement of the Supreme Court in *Perkins Eastman Architects DPC & Anr. vs. HSCC (India) Ltd*^I, an arbitrator cannot be unilaterally appointed by one of the disputing parties.

6. Though in their reply dated 20.09.2023 the respondent has raised certain other objections to the disputes being referred to arbitration, in the course of submissions, learned counsel for the respondent fairly states that they are not averse to the disputes being referred to arbitration, but that they would first wish to explore the possibility of an amicable settlement through mediation.
7. Upon a conspectus of the averments contained in the petition, the stand taken by the respondent, and the submissions made, this court is satisfied that there is a valid and subsisting arbitration agreement between the parties; that this court has territorial jurisdiction to entertain and decide the present petition; and also that the disputes that are stated to have arisen between the parties, as set-out *inter-alia* in invocation notice dated 03.11.2022, do not appear *ex-facie* to be non-arbitrable.
8. In the above view of the matter, and since learned counsel for the parties have expressed interest in resolving the disputes through mediation, this court is persuaded to appoint an arbitrator in the matter, while at the same time keeping such appointment in abeyance for some reasonable period of time, to enable the parties to attempt an amicable settlement of their disputes.

^I (2020) 20 SCC 760



9. At this stage, learned counsel for the parties jointly request that this court may appoint an arbitrator; refer the matter for arbitration under the aegis of the Delhi International Arbitration Centre, New Delhi ('DIAC'), keeping all their respective factual and legal contentions open; and to then hold the appointment in abeyance for 02 (two) months, affording to the parties sufficient time to attempt an amicable resolution of their *inter-se* disputes through mediation.
10. Accordingly, the present petition is allowed and **Mr. Soutik Banerjee, Advocate (Cellphone No.: +91 852707320)** is appointed as the learned Sole Arbitrator to adjudicate upon the disputes between the parties; with arbitration proceedings to be conducted under the aegis of the DIAC, in accordance with applicable rules.
11. The learned Sole Arbitrator would furnish to the parties 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.
12. The learned Arbitrator shall then proceed with the arbitral proceedings in accordance with the rules and regulations of DIAC and subject to arbitrator's fee and arbitration costs, as may be applicable.
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 merits, in accordance with law.
14. In view of the request made by the parties however, the order appointing the arbitrator shall be held in abeyance for a period of 02 (two) months from today, during which time the parties are at liberty



to attempt a negotiated settlement of their disputes; failing which, the order of appointment shall take effect.

15. As requested, the parties are referred to mediation under the aegis of Delhi High Court Mediation & Conciliation Centre, with a request to the learned Organizing Secretary to appoint an appropriate mediator in the matter.
16. Let the parties approach the Mediation Centre on Wednesday, *i.e.* 13th March 2024 at 02:30 p.m. for the above purpose.
17. A copy of this order be sent to the learned Organizing Secretary of the Mediation Centre, for information and compliance.
18. Parties are directed to sincerely attempt to settle their *inter-se* disputes through mediation within 02 months; and in the event settlement does not fructify within the said period, to approach the learned Arbitrator hereby appointed, within 10 days after the aforesaid two-month period.
19. A copy of this order be communicated *forthwith* to the Co-ordinator, DIAC, for information and compliance.
20. A copy of this order be communicated by the Registry *via* e-mail to the learned Sole Arbitrator, as also to learned counsel for the parties.
21. The petition stands disposed-of in the above terms.
22. Pending applications, if any, also stand disposed-of.

ANUP JAIRAM BHAMBHANI, J

MARCH 7, 2024/ak