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

+ **ARB.P. 338/2024 & I.A. 5578/2024**

NARESH KUMAR BANSAL

..... Petitioner

Through: Mr. Subodh Kr. Pathak, Mr. Adil Alvi, Ms. Basak and Mr. Pawan Kumar Sharma, Advocates

versus

CHIEF ENGINEER CENTRAL PUBLIC WORKS

DEPARTMENT NEW DELHI & ANR.

..... Respondents

Through: Mr. Arnav Kumar, CGSC with Mr. Chetanya Kapoor and Ms. Pranaya Sahay, Advocates.

CORAM:

HON'BLE MR. JUSTICE PRATEEK JALAN

ORDER

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11.03.2024

1. The petitioner has filed this petition under Section 11 of the Arbitration and Conciliation Act, 1996 [“the Act”], for appointment of an arbitrator for adjudication of disputes under an agreement between the parties. The agreement is undated and deals with a contract placed upon the petitioner for upgradation of flats in residential quarters at Andrews Ganj, New Delhi. The agreement contains an arbitration clause [Clause 25].

2. Disputes having arisen between the parties, the arbitration clause was 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

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parties that he has entered into the reference.

3. The contention of the petitioner is that the unilateral appointment of the arbitrator 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 decisions of Division Bench of this Court in *Ram Kumar vs. Shriram Transport Finance Co. Ltd.* [2022 SCC OnLine Del 4268] and *Govind Singh vs. Satya Group Pvt. Ltd.* [(2023) SCC Online Del 37]. 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.

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 a unilaterally appointed arbitrator is a nullity in the eyes of law. In view of the above, the petition is liable to be allowed, and an independent arbitrator appointed. Learned counsel for the parties suggest that an arbitrator with an Engineering



qualification may be appointed, 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 petition is disposed of by referring the disputes between the parties under the agreement in question, to arbitration under the aegis of DIAC. DIAC is requested to nominate an arbitrator from its panel, being a person with an Engineering qualification. If possible, the arbitration may be entrusted to the same arbitrator appointed pursuant to order dated 06.03.2024 in ARB.P. 297/2024 [*Naresh Kumar Bansal vs. Chief Engineer, Central Public Works Department New Delhi & Anr.*] and connected matter, which are between the same parties and similar in all material aspects.

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. 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.

10. The petition, alongwith pending application, is disposed of in terms of the above.

PRATEEK JALAN, J

MARCH 11, 2024

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