



2024:DHC:8563



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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Date of Decision: 05.11.2024

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O.M.P. (COMM) 321/2022 and IA Nos.12194/2022 (Stay),
42329/2024 (filed on behalf of petitioner for stay of award)

SOUMITA CONSTRUCTION PRIVATE LIMITEDPetitioner

Through: Mr. Bhupesh Narula, Ms. Rinku
Narula, Ms. Poonam Nagpal, Mr.
Rishi Kant Singh, Mr. Anugrah Ekka
and Mr. Kanishk Taneja, Advs.

versus

INDIABULLS DISTRIBUTION SERVICES LIMITED

.....Respondent

Through: Mr. Ankit Banati, Mr. Abhay
Agnihotri and Mr. Nilay Gupta, Advs.

CORAM:

HON'BLE MR. JUSTICE SACHIN DATTA

SACHIN DATTA, J (ORAL.)

1. The present petition assails an arbitral award dated 11.04.2022, passed by the learned Sole Arbitrator.
2. During the course of hearing, it transpires that the arbitrator was unilaterally appointed by the respondent vide communication dated 17.09.2019. Undisputedly, the award rendered by a unilaterally appointed arbitrator is a nullity / *non est*, as held by the Supreme Court in *Perkins Eastman Architects DPC v. HSCC (India) Ltd.* (2020) 20 SCC 760; *TRF Ltd. v. Energo Engineering Projects Ltd.* (2017) 8 SCC 377 and *Bharat Broadband Network Ltd. v. United Telecom Ltd.* (2019) 5 SCC 755 as well



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as by this Court in a series of judgments including *Govind Singh v. M/s. Satya Group Pvt. Ltd. and Anr.* 2023:DHC:000081; *Kotak Mahindra Bank Ltd. v. Narendra Kumar Prajapat* 2023:DHC:3705-DB; *Sunil Sethi v. Hero Fincop Ltd.* 2024 SCC OnLine Del 1476; *Naveen Kandhari and Anr. v. Jai Mahal Hotels Pvt. Ltd.* 2018 SCC OnLine Del 9180. As such, respective counsel for the parties do not dispute that the award is liable to be set aside.

3. Accordingly, the impugned award is set aside.

4. Respective counsel for the parties jointly request that since the disputes between the parties and the respective claims have to be adjudicated, an arbitrator be appointed in these proceedings itself for the said purpose.

5. Accordingly, at joint request of the parties, Mr. Justice (Retd.) Rajiv Shakhder, Former Chief Justice, Himachal Pradesh High Court (Mob. No.: +91.9717495004) is appointed as the learned Sole Arbitrator to adjudicate the disputes between the parties.

6. It is further agreed between the parties that the arbitrator shall proceed with the matter on the basis of pleadings already filed before the previous arbitrator, however, the parties shall be at liberty to amend the pleadings and/or make supplementary filings as may be warranted in accordance with law.

7. The learned Sole Arbitrator may proceed with the arbitration proceedings subject to furnishing to the parties requisite disclosures as required under Section 12 of the A&C Act.

8. The learned Sole Arbitrator shall be entitled to fee in accordance with IVth Schedule to the A&C Act; or as may otherwise be agreed to between the



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parties and the learned Sole Arbitrator.

9. All rights and contentions of the parties in relation to the claims/counter-claims are kept open, to be decided by the learned Arbitrator on their merits, in accordance with law.

10. Needless to say, nothing in this order shall be construed as an expression of opinion of this Court on the merits of the case.

11. The present petition, along with pending applications, stand disposed of in the above terms.

SACHIN DATTA, J

NOVEMBER 5, 2024/cl