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

+ **FAO (COMM) 94/2024, CM APPL. 30182/2024-Stay**

BHARAT HEAVY ELECTRICALS LTD.Appellant

Through: Mr. Pallav Kumar, Mr. Dibya
Nishant, Ms. Farheen Pehwale and
Mr. Khushbu Dwivedi, Advs

versus

M/S LINK ENTERPRISESRespondent

Through: Advocate through VC (appearance
not given)

CORAM:

HON'BLE MS. JUSTICE REKHA PALLI

HON'BLE MR. JUSTICE SAURABH BANERJEE

ORDER

21.10.2024

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1. The present appeal has been filed assailing the order dated 23.04.2023 passed by the learned District Judge (Commercial Court), South District (learned Trial Court) in CS (COMM) No.211/2023. Vide the impugned order, the learned Trial Court has rejected the application preferred by the appellant under Section 8 of the Arbitration & Conciliation Act, 1996 whereby it had sought that the plaint be returned and the matter be referred to arbitration in view of the agreement dated 08.12.2014, which contains an arbitration clause.

2. Learned counsel for the appellant submits that despite there being no denial by the respondent/plaintiff that the parties were bound by the



arbitration clause contained in the agreement dated 08.12.2014, the learned Trial Court has rejected the application only on the premise that under the said agreement, the parties had agreed that the General Manager of the appellant would be competent to appoint the Arbitrator, which clause was not in consonance with the decision of the Hon'ble Supreme Court in ***Perkins Eastman Architects DPC & Anr. Vs. HSCC (India) Ltd.*** 2019 LawSuit (SC) 1903. He submits that the appellant has no objection if instead of the appellant's General Manager appointing an Arbitrator, this Court was to appoint an independent Arbitrator and direct that the arbitration proceedings be held under the aegis of the Delhi International Arbitration Centre (DIAC).

3. Learned counsel for the respondent/ plaintiff has no objection to the aforesaid suggestion and therefore joins the learned counsel for the appellant in praying that the impugned order be set aside by appointing an independent Arbitrator and directing that the arbitration proceedings in respect of the claims arising out of the agreement dated 08.12.2014 be determined through arbitration proceedings, be held under the DIAC.

4. In the light of this stand taken by the parties, the impugned order is set aside and the appellant's application under Section 8 of the Arbitration & Conciliation Act, 1996 is allowed. Further, as agreed between the parties instead of permitting the appellant to appoint an Arbitrator, we appoint Mr. Kumar Rajesh Singh, Advocate (9811013515) as the sole Arbitrator for adjudication of disputes between the parties arising out of claims in the context of agreement dated 08.12.2014. The arbitration will be held under the aegis of the DIAC and therefore, the fees of the said Arbitrator will be governed by the rules of the DIAC.



5. It is however made clear that since this Court has not expressed any opinion on the merits of the rival claims of the parties, it will be open for the parties to raise their respective claims/counter claims before the learned Arbitrator, which will be decided in accordance with law. Needless to state, before entering upon reference, the learned Arbitrator will comply with Section 12 of the Arbitration and Conciliation Act, 1996.

6. While disposing of the appeal alongwith the pending application in the aforesaid terms, we direct that the original documents, if any, filed by both sides be returned to them by the learned Trial Court on their taking appropriate steps in accordance with law.

REKHA PALLI, J

SAURABH BANERJEE, J

OCTOBER 21, 2024/Ab