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

+ **O.M.P. (T) (COMM.) 72/2023 & I.A. 14918/20232**

NORMET INDIA PVT LTD

..... Petitioner

Through: Mr. Yatin Grover, Mr. Achal
Shekhar & Mr. Ankit, Advocates.
[M:-9811115488]

versus

NIRMAN VRIDHI INFRA LLP & ANR.

..... Respondents

Through: None.

CORAM:

HON'BLE MR. JUSTICE PRATEEK JALAN

ORDER

% **15.01.2024**

1. This petition has been filed under Sections 14 and 15 of the Arbitration and Conciliation Act, 1996 ["the Act"] for termination of the mandate of the arbitral tribunal, and for appointment of a substitute arbitrator.

2. The dispute before the learned arbitrator arises out of a Rental Agreement dated 17.07.2020. The agreement contains an arbitration clause [clause 16], which provides for arbitration by a sole arbitrator to be appointed by the petitioner herein. Disputes having arisen between the parties, the petitioner appointed an arbitrator who entered into the reference. Pleadings were completed before the learned Arbitrator. However, in response to an interlocutory application filed by the



petitioner, the respondent raised an objection that the learned Arbitrator had been unilaterally appointed and that any award rendered by him would be *non-est*. It is in these circumstances that the petitioner has approached the Court for appointment of a substitute arbitrator.

3. Notice was issued in this petition on 10.08.2023. The submission of learned counsel for the petitioner had been noted in the order dated 22.11.2023, to the effect that the respondents have been served by email and speed-post. However, in view of the office noting that the respondents could not be served, *dasti* service was directed. *Dasti* service at the address of the respondents has been unsuccessful as the respondents were stated to have left the premises in question. However, learned counsel for the petitioner has today handed up an affidavit of service, which is taken on record. It shows that service has been effected upon the respondent at the email address mmgunalan@gmail.com, and upon counsel who was appearing on behalf of the respondent in the arbitral proceedings at the email address tkdivyanshu39@gmail.com. The aforesaid email address of the respondent, mmgunalan@gmail.com, appears in the agreement dated 17.07.2020 as an address upon which notices are to be served upon it under clause 21.3(ii), and also in a communication dated 08.06.2021 addressed by the respondent to the petitioner. The aforesaid email address of learned counsel appears on the *vakalatnama* filed by him before the learned arbitrator [at page 108 of the present petition].

4. In these circumstances, I am satisfied that the respondents have been duly served. It would normally be expected that the counsel appearing for the respondent in the arbitral proceedings would at least



appear before the Court in these related proceedings, if the respondent wished to resist the relief sought.

5. The impermissibility of arbitration by a unilaterally appointed arbitrator is now settled in several decisions of the Supreme Court and this Court, commencing with *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]. The respondent itself has taken objection before the learned Arbitrator that any award passed by him will be *non-est*. The petitioner has accepted this position and approached the Court for appointment of an independent arbitrator.

6. Having regard to these facts and circumstances, the petition is allowed. The mandate of the learned Arbitrator is terminated, and Mr. Arnav Kumar, Advocate (Mob No. 9873657406) is appointed as the arbitrator in his place. The arbitration proceedings will commence from the stage at which they are pending before the present Arbitrator.

7. The remuneration of the learned arbitrator appointed today will be computed in accordance with the Fourth Schedule of the Act.

8. The petition stands disposed of with these directions.

PRATEEK JALAN, J

JANUARY 15, 2024

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