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

+ O.M.P. (T) (COMM.) 90/2022 & I.A. 14377/2022

SWIFT SECURITAS PRIVATE LIMITED .....Petitioner  
Through: Mr. Suman Kr. Singh, Advocate  
with Mr. K.N. Pandey, AR.

versus

SEVEN SEAS HOSPITALITY  
PRIVATE LIMITED .....Respondent  
Through: Mr. Manish Malhotra, Advocate.

**CORAM:**  
**HON'BLE MR. JUSTICE PRATEEK JALAN**

**ORDER**  
**31.07.2024**

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1. This petition under Sections 14 and 15 of the Arbitration and Conciliation Act, 1996 [“the Act”], has been filed for termination of the mandate of the learned arbitrator, who was unilaterally appointed by the respondent.
2. The factual position that the learned arbitrator was unilaterally appointed is undisputed. However, according to Mr. Manish Malhotra, learned counsel for the respondent, the rights of the petitioner under Section 12(5) of the Act were waived impliedly.
3. Mr. Suman Kr. Singh, learned counsel for the petitioner, submits that the question of implied waiver of its rights under Section 12(5) of the Act, cannot arise, in view of the Supreme Court’s decision in *Bharat*



*Broadband Network Ltd. v. United Telecom Limited* [(2019) 5 SCC 755] and other judgments following it. He also submits that the impermissibility of unilateral appointment is now settled by the judgments of the Supreme Court in *TRF Limited vs. Energo Engineering Projects Limited* [(2017) 8 SCC 377] and *Perkins Eastman Architects DPC vs. HSCC (India) Limited* [(2020) 20 SCC 760], and the Division Bench judgments of this Court in *Ram Kumar v. Shriram Transport Finance Co. Ltd.* [2022 SCC OnLine Del 4268], *Govind Singh v. Satya Group Pvt. Ltd.* [2023 SCC OnLine Del 37], *Kotak Mahindra Bank Ltd. v. Narendra Kumar Prajapat* [2023 SCC OnLine Del 3148] and *Babu Lal v. Cholanmandalam Investment & Finance Co. Ltd* [2023 SCC OnLine Del 7239].

4. Unfortunately, these contentions cannot be finally adjudicated in this petition because the respondent has taken an objection as to the maintainability of the petition before this Court, on account of pecuniary jurisdiction.

5. Mr. Singh does not dispute that the amount of claims and counter claims in this case, is below the pecuniary jurisdiction of this Court, but submits that the petitioner's attempt to move the District Court was unsuccessful as the District Court took the view that an application under Sections 14 and 15 of the Act, will not lie before it.

6. In the order dated 22.04.2024 of the District Court, it was held as follows:

“ *Perused.*  
*This is an application u/s 14 and 15 of Arbitration and Conciliation Act.*  
*As per the judgement of Hon'ble High Court in DDA Vs. M/s Tara Chand Sumit Construction Company OMP (MISC) 236/2019, decided on*



*04.12.2020, the same is not maintainable before this Court.  
Let the Ld. counsel satisfy the Court on this issue.  
Be listed for 30.05.2022.”*

The petition was withdrawn by the petitioner on the next date of hearing, with liberty to file before this Court.

7. It is evident that the District Court relied on a judgment of this Court in *DDA vs. M/s Tara Chand Sumit Construction Company* [decided on 12.05.2020, in OMP(MISC)(COMM) 236/2019]. However, 13 days after the order of the District Court, the Supreme Court pronounced its decision in *Swadesh Kumar Agarwal v. Dinesh Kumar Agarwal* [(2022) 10 SCC 235], to the contrary. It held that an application under Sections 14 and 15 would lie in the “court” concerned, as defined in Section 2(1)(e) of the Act. I had occasion to consider this question in *National Highways Authority of India v. Third Rock Consultants (P) Ltd.* [2023 SCC OnLine Del 444], where I came to the conclusion that the judgment of this Court in *DDA vs. M/s Tara Chand Sumit Construction Company* [*Supra*], cannot survive the decision of the Supreme Court in *Swadesh Kumar Agarwal* [*Supra*].

8. Mr. Singh further submits that this position would lead to a third petition having to be instituted on the same ground, which is also settled in its favour by the judgments of the Supreme Court and of this Court noted above. Mr. Singh is right in so submitting. However, position of law enunciated by the Supreme Court in *Swadesh Kumar Agarwal* [*Supra*] is clear. The petitioner must therefore approach the District Court on the same cause of action, if necessary.

9. In order to avoid this consequence, certain suggestions were also



exchanged between learned counsel for the parties on 25.07.2024, which could have put a quietus to this issue, but those suggestions have not found favour with the respondent.

10. The petition is therefore dismissed on the ground of pecuniary jurisdiction, leaving it open to the petitioner to approach the competent court on the same cause of action. Suffice it to say that, if the petition is unreasonably resisted by the respondent in the District Court, the District Court can always pass appropriate orders of costs.

11. Learned counsel for the parties submits that they would like to make an attempt to settle their disputes in mediation. For this purpose, they are referred to Samadhan, Delhi High Court Mediation and Conciliation Centre, Shershah Road, New Delhi-110503. The parties will appear before the learned mediator on 06.08.2024.

12. In the event the mediation proceedings are unsuccessful, the petitioner may institute proceedings in accordance with law, after lapse of period of one month from today.

13. The petition, alongwith the pending application, stands disposed of.

**PRATEEK JALAN, J**

**JULY 31, 2024**

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