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

+ **ARB.P. 872/2024 & I.A. 43133/2024**

M S S KUMAR COMPANY

.....Petitioner

Through:

versus

UNION OF INDIA & ORS.

.....Respondents

Through: Ms. Meghna Rao, Mr. Aadhar Nautiyal, Mr. Harshit Goel, Advs. for Mr. Nune Balraj, SPC for UOI.

CORAM:

HON'BLE MR. JUSTICE C. HARI SHANKAR

ORDER

% **25.10.2024**

I.A. 43133/2024

1. By this application, the Respondent 1 seeks modification of judgment dated 22 August 2024.

2. I have heard Ms. Meghna Rao, learned Counsel for the Respondent 1/applicant.

3. Ms. Rao submits that Clause 70 of the General Conditions of Contract¹, as extracted in para 2 of the judgment of which modification is sought, was an older clause of the GCC and that the appropriate clause which is presently applicable is, to the extent relevant, as under:

¹ "GCC", hereinafter



“70. Arbitration- All disputes, between the parties to the Contract (other than those for which the decision of the C.W.E. or any other person is by the Contract expressed to be final and binding) shall, after written notice by either party to the Contract to the other of them, be referred to the sole arbitration of a [Serving Officer having degree in Engineering or equivalent or having passed final/ direct final Examination of sub-Division II of Institution of Surveyor (India) recognised by the Govt. of India] to be appointed by the authority mentioned in the tender documents.”

4. Ms. Rao’s submission is that, in view of the aforesaid clause, the Court may appoint an arbitrator who has an engineering background.

5. Having heard Ms Rao, I do not find that any case for modification of the judgment passed by this Court is made out.

6. Even if it were to be assumed that the appropriate Clause 70 applicable is the one to which Ms. Rao draws my attention, the stipulation, therein, that the arbitrator has to be a serving officer with an engineering qualification can obviously not be applied in view of the law laid down by the Supreme Court in *Perkins Eastman Architects DPC v HSCC (India) Ltd*², *Bharat Broadband Network Ltd v United Telecoms Ltd*³ and *Haryana Space Application Centre (HARSAC) v Pan India Consultants Pvt Ltd*⁴. Once the said clause is inapplicable, it is inapplicable *in toto*.

7. The stipulation of the officer having a degree in engineering does not survive for consideration. Applying the law laid down in

² (2020) 20 SCC 760

³ (2019) 5 SCC 755

⁴ (2021) 3 SCC 103



Perkins Eastman, it is for the Court thereafter to appoint an arbitrator.

8. The stipulation in Clause 70 – assuming the applicable Clause 70 is as shown by Ms. Rao – regarding the arbitrator having to have a degree in engineering, can obviously not apply to the Court when it exercises jurisdiction under Section 11(6) of the Arbitration and Conciliation Act, 1996 and appoints an arbitrator.

9. No occasion, therefore, arises for this Court to modify its judgment dated 22 August 2024.

10. The application is dismissed.

C. HARI SHANKAR, J.

OCTOBER 25, 2024

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Click here to check corrigendum, if any