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

+ **ARB.P. 1013/2023**

NARESH JAIN

..... Petitioner

Through: Mr. Hari Kishan, Mr. Akarsh
Sharma, Mr. Keyur Tripathi & Mr.
Parantap Agarwal, Advocates.

versus

SWAMI SHARADDHANAND COLLEGE

..... Respondent

Through: Ms. Niyati Sharma, Advocate.

CORAM:

HON'BLE MR. JUSTICE PRATEEK JALAN

ORDER

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18.01.2024

1. By way of this petition under Section 11 of the Arbitration and Conciliation Act, 1996 [“the Act”], the petitioner seeks appointment of an arbitrator to adjudicate disputes between the parties under a contract awarded pursuant to a tender dated 21.04.2014. The agreement contains an arbitration clause [Clause 25], which provides for arbitration of the Chairman of the respondent-college or his nominee. It has also been provided that the arbitration proceedings will be held in Delhi, and jurisdiction has been vested exclusively in the courts in Delhi.

2. Disputes having arisen between the parties, the petitioner addressed a demand notice dated 19.01.2023 to the respondent, calling upon the respondent to make payment of a sum of ₹66,78,169. As the aforesaid legal notice was not complied with, the petitioner invoked arbitration by a



legal notice dated 09.08.2023. This notice also failed to elicit a response, which has led to the institution of this petition.

3. Notice was issued in this petition on 03.10.2023, and the respondent entered appearance through counsel on 17.11.2023. No reply has been filed by the respondent, despite time granted by the order dated 03.10.2023.

4. The only objection to appointment of an arbitrator taken by Ms. Niyati Sharma, learned counsel for the respondent, is that the claims of the petitioner were not certified by the architect in terms of the requirement of the contract, and were therefore not payable. This is not a ground which is relevant for adjudication of disputes under Section 11 of the Act. The arbitration agreement being undisputed and invocation thereof also being undisputed, the appropriate course is to appoint an arbitrator, leaving it open to the parties to raise their respective claims and defences before the learned arbitrator.

5. Although the agreement provides for arbitration of the Chairman of the respondent-college or his nominee, such unilateral appointment of the arbitrator is impermissible in view of the decisions of the Supreme Court and this Court in *TRF Limited vs. Energo Engineering Projects Limited* [(2017) 8 SCC 377], *Perkins Eastman Architects DPC & Anr. vs. HSCC (India) Limited* [(2020) 20 SCC 760] and other judgments following these. The petitioner's request for the appointment of an independent arbitrator is, therefore, accepted.

6. The disputes between the parties are referred to arbitration of Mr. Samrat Nigam, Advocate [Tel: 9810424476].

7. The arbitration will be conducted under the aegis of the Delhi



International Arbitration Centre, Delhi High Court and subject to its Rules, including as to the remuneration of the learned arbitrator.

8. Learned arbitrator is requested to furnish a declaration under Section 12 of the Act, prior to entering upon the reference.

9. It is made clear that this Court has not adjudicated the rights and contentions of the parties on maintainability or merits, and the same are reserved for adjudication by the learned Arbitrator.

PRATEEK JALAN, J

JANUARY 18, 2024
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