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

+ O.M.P.(MISC.)(COMM.) 546/2024

SHANTI AAROGYA JV (SAJV), NEPALPetitioner
Through: Mr. Thakur Sumit, Advocate.

versus

TELECOMMUNICATIONS
CONSULTANTS INDIA LTDRespondent
Through: Ms. Sushila & Mr. Ashish Negi,
Advocates.

CORAM:
HON'BLE MR. JUSTICE PRATEEK JALAN

ORDER
08.08.2024

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1. This petition has been filed under Section 29A of the Arbitration and Conciliation Act, 1996 [“the Act”], for extension of the mandate of the learned arbitrator, who is in *seisin* of disputes between the parties under an agreement dated 16.10.2017.

2. While issuing notice on 25.07.2024, the Court recorded as follows:

“1. The petitioner has approached this Court under Section 29A of the Arbitration and Conciliation Act, 1996 [“the Act”], for extension of mandate of the learned arbitrator, who is in *seisin* of disputes between the parties under an agreement dated 16.10.2017.

2. Although learned counsel has entered appearance on behalf of the respondent, and has been instructed not to oppose the petition, it appears from the contents of the petition and the documents placed on record, that the learned arbitrator has been appointed unilaterally by the Chairman and Managing Director of the respondent, vide letter dated 15.01.2021.

3. The judgments of the Supreme Court in *TRF Limited vs.*



Energco Engineering Projects Limited [(2017) 8 SCC 377] and Perkins Eastman Architects DPC vs. HSCC (India) Limited [(2020) 20 SCC 760], make it clear that arbitration by a person appointed unilaterally by one of the parties, is impermissible under Section 12 of the Act, unless the parties have waived their rights under the said provision. Following these judgments, this Court has also held that, in the absence of express waiver by the parties, any award rendered by a unilaterally appointed arbitral tribunal would be null and void ab initio, and unenforceable.

4. *Learned counsel for the parties are therefore directed to take instructions and to file affidavits within one week, stating as to whether they waive their rights under Section 12 of the Act.*

5. *List on 08.08.2024.”*

3. Both parties have filed affidavits waiving their right to object to the appointment of the arbitrator on the grounds contained in Section 12 of the Act.

4. Learned counsel for the petitioner has handed over a copy of the said affidavit in Court, which is taken on record.

5. The parties are directed to place the affidavits on the record of the arbitral tribunal also.

6. Having regard to the above, the petition is allowed and with the consent of the learned counsel for the parties, the mandate of the arbitrator is extended by until 30.09.2024 with effect from 01.03.2024.

7. The petition is disposed of in terms of the above.

PRATEEK JALAN, J

AUGUST 8, 2024

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