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

+ **ARB.P. 1147/2023**

SANJAY AGARWAL

..... Petitioner

Through: Mr. Bhupesh Narula and Mr. Swetabh
Sharma, Advocates.

versus

CENTRAL WAREHOUSING CORPORATION Respondent

Through: Mr. Prithvi Thakur, Mr. Ritik Kumar,
Mr. Keshav Thakur and Ms. Palak
Mathur, Advocates.

CORAM:

HON'BLE MR. JUSTICE ANUP JAIRAM BHAMBHANI

ORDER

23.04.2024

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By way of the present petition filed under section 11(6) of the Arbitration & Conciliation Act 1996 ('A&C Act'), the petitioner seeks appointment of a Sole Arbitrator in respect of their disputes with the respondent that have arisen from Office Work Order No.CWC/RO-DLI/Engg. Section/ICD-PPG/Work Order/2019-20/2702 dated 26.11.2019 ('Work Order').

2. Notice on this petition was issued on 03.11.2023; consequent upon which reply dated 01.02.2024 has been filed by the respondent. Alongwith their reply dated 01.02.2024, the respondent has also annexed a list of arbitrators empanelled with them and, *vide* communication dated 19.12.2023, the respondent has proceeded to appoint one of the empanelled members as the Sole Arbitrator in respect of the disputes.



3. Mr. Bhupesh Narula, learned counsel appearing for the petitioner draws attention to clause 25 contained in section-5 of the Work Order, which comprises the dispute resolution and arbitration clause and contemplates the appointment of a Sole Arbitrator by the respondent. Mr. Narula further points-out, that as per Schedule-F to the Work Order, the parties have agreed that the place of arbitration would be New Delhi.
4. The record also shows that the petitioner had issued to the respondent invocation notice dated 04.02.2023; to which no response was sent by the respondent.
5. Be that as it may, learned counsel for the parties are *ad-idem*, that in view of the decision of the Supreme Court *inter-alia* in ***Perkins Eastman Architects DPC & Anr. vs. HSCC (India) Ltd.***¹ and ***Bharat Broadband Network Ltd. vs. United Telecoms Ltd.***², an arbitrator unilaterally appointed by one of the parties is *de-jure* ineligible.
6. Counsel for the parties also agree, that the appointment made by the respondent did not comply even with the requirements of clause 25 in section-5 of the Work Order, inasmuch as the Arbitrator appointed was not a 'Graduate Engineer' as required by clause 25.
7. In the circumstances, after making brief submissions in the matter, learned counsel for the parties jointly request that this court may appoint a Sole Arbitrator from the list of arbitrators empanelled with the respondent; and refer the disputes between them to such Arbitrator under the aegis of the Delhi International Arbitration Centre, New

¹ (2020) 20 SCC 760

² (2019) 5 SCC 755



Delhi ('DIAC'), keeping all their respective factual and legal contentions open.

8. Upon a conspectus of the averments contained in the petition, the stand taken by the respondent, and the submissions made, this court is satisfied that there is a valid and subsisting arbitration agreement between the parties; that this court has territorial jurisdiction to entertain and decide the present petition; and also that the disputes that are stated to have arisen between the parties, as set-out *inter-alia* in invocation notice dated 04.02.2023, do not appear *ex-facie* to be non-arbitrable.
9. In the aforesaid backdrop, by consent of the parties, **Mr. Sunil Kumar Garg, Director General, CPWD (Retd.) (Cellphone No.: +91 98688-77300 & +91 88002-90839)**, whose name appears at serial No.45 of the list of arbitrators empanelled with the respondent, is appointed as the learned Sole Arbitrator to adjudicate upon the disputes between the parties; with arbitration proceedings to be conducted under the aegis of the DIAC, in accordance with applicable rules.
10. The learned Sole Arbitrator would furnish to the parties requisite disclosures as required under section 12 of the A&C Act; and in the event there is any impediment to the appointment on that count, the parties are given liberty to file an appropriate application in this court.
11. The learned Arbitrator shall then proceed with the arbitral proceedings in accordance with the rules and regulations of DIAC.
12. It is made clear, that though arbitration will be conducted under the aegis and as per the rules and regulations of the DIAC, insofar as the



arbitrator's fee and arbitration costs are concerned, those will be as per the Schedule of Fee and Costs as per CWC Circular No.CWC/I-Arbitration Fee/201/Rectt./2015-16/650A dated 12.04.2016, as agreed to between the parties and as per the terms of empanelment of the Arbitrator.

13. All rights and contentions of the parties in relation to the claims/counter-claims are kept open, to be decided by the learned Arbitrator on merits, in accordance with law.
14. A copy of this order be communicated *forthwith* to the Co-ordinator, DIAC, for information and compliance.
15. A copy of this order be sent by e-mail to the learned Arbitrator, as also to learned counsel for the parties.
16. The petition stands disposed-of in the above terms.
17. Pending applications, if any, also stand disposed-of.

ANUP JAIRAM BHAMBHANI, J

APRIL 23, 2024

V.Rawat