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

+ **O.M.P. (T) (COMM.) 116/2023**

M/S CH ELECTRICALS

..... Petitioner

Through: Mr. Sarthak Bhatia, Mr. Lakshay Chhabra, Adv.

versus

CENTRAL GROUND WATER BOARD

..... Respondent

Through: Mr. Siddharth Khatana, SPC with Mr. Vedansh Anand, Mr. Mahesh Kumar Rathore, Adv. with Ms. Rose Anita Kujur, SC-E & OIC, SUO Ranchi, Mr. S.C. Prasad, EE, DIV-5, Ranchi, Mr. A. K. Sinha, OS, DIV-5, Ranchi, Mr. Pankaj Kumar, SC-D, MER Patna, Mr. A. Jayachandran, SE, HQ Faridabad, Mr. Mukesh Kumar, AEE, Varanasi, Mr. Rajendra Kumar, UDC, HQ.

CORAM:

HON'BLE MR. JUSTICE DINESH KUMAR SHARMA

ORDER

15.03.2024

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1. The present petition has been filed on behalf of the petitioner under Section 14 of the Arbitration and Conciliation Act, 1996 for the termination of the mandate of the unilaterally appointed arbitrator by the respondent and the appointment of a new arbitrator for the resolution of disputes between the parties.
2. Learned counsel for the respondent in their reply has submitted that the



learned Sole Arbitrator was appointed by the Chairman, CGWB in terms of the Contract Agreement vide letter dated 16.10.2023. In exercise of the authority in terms of Clause 9.2 and 20 of the Contract Agreement. Learned counsel submits that as the agreement between the parties stipulated that the arbitrator is to be appointed by the Chairman, CGWB, now the petitioner cannot object to the unilateral appointment of the Arbitrator.

3. I consider that the contention of the respondent is to be noted only to be rejected.
4. The appointment of a Sole Arbitrator has come up for discussion before the Hon'ble Supreme Court and before this court in various cases. As far as the unilateral appointment of an arbitrator is concerned, the Hon'ble Supreme Court in ***Perkins Eastman Architects DPC & Anr. v. HSCC (India) Limited*** 2019 SCC OnLine SC 1517 inter alia held as under:

“This application under Section 11(6) read with Section 11(12)(a) of the Arbitration and Conciliation Act, 1996 (“the Act”) and under the Appointment of Arbitrators by the Chief Justice of India Scheme, 1996 (“the Scheme”) prays for the following principal relief:

(a) appoint a sole arbitrator, in accordance with Clause 24 of the contract dated 22-5-2017 executed between the parties and the sole arbitrator so appointed may adjudicate the disputes and differences between the parties arising from the said contract.”

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21. But, in our view that has to be the logical deduction from TRF Ltd. [TRF Ltd. v. Energo Engg. Projects Ltd., (2017) 8 SCC 377 : (2017) 4 SCC (Civ) 72] Para 50 of the decision shows that this Court was concerned with the issue, “whether the Managing Director, after becoming ineligible by operation of law, is he still eligible to nominate an arbitrator” The ineligibility referred to therein, was as a result of operation of law, in that a person having an interest in the dispute or in the outcome or decision thereof, must not only be ineligible to act as an arbitrator but must also not be eligible to appoint anyone else as an arbitrator and that such person cannot and should not have any role in charting out any course to the dispute resolution by having the power to appoint an arbitrator. The next sentences in the paragraph, further show that cases where both the parties could nominate respective arbitrators of their choice were found to be completely a different situation. The reason is clear that whatever advantage a party may derive by nominating an arbitrator of its choice would get counter- balanced by equal power with the other party. But, in a case where only one party has a right to appoint a sole arbitrator, its choice will always have an element of exclusivity in determining or charting the course for dispute resolution. Naturally, the person who has an interest in the outcome or decision of the dispute must not have the power to appoint a sole arbitrator. That has to be taken as the essence of the amendments brought in by the Arbitration and Conciliation (Amendment) Act, 2015 (3 of 2016) and recognised by the decision of this Court in TRF Ltd. [TRF Ltd. v. Energo Engg. Projects Ltd., (2017) 8 SCC 377 : (2017) 4 SCC (Civ) 72]”

5. Similarly in *TRF Ltd. V. Energo Engineering Projects Ltd.* (2017) 8



SCC 377 also the Hon'ble Supreme Court has inter alia held as under:

“54. In such a context, the fulcrum of the controversy would be, can an ineligible arbitrator, like the Managing Director, nominate an arbitrator, who may be otherwise eligible and a respectable person. As stated earlier, we are neither concerned with the objectivity nor the individual respectability. We are only concerned with the authority or the power of the Managing Director. By our analysis, we are obligated to arrive at the conclusion that once the arbitrator has become ineligible by operation of law, he cannot nominate another as an arbitrator. The arbitrator becomes ineligible as per prescription contained in Section 12(5) of the Act. It is inconceivable in law that person who is statutorily ineligible can nominate a person. Needless to say, once the infrastructure collapses, the superstructure is bound to collapse. One cannot have a building without the plinth. Or to put it differently, once the identity of the Managing Director as the sole arbitrator is lost, the power to nominate someone else as an arbitrator is obliterated. Therefore, the view expressed by the High Court is not sustainable and we say so.”

6. Learned counsel for the respondent however submits that without prejudice to their contention, an independent Sole Arbitrator may be appointed by this court. The claim amount is stated to be around Rs. 1,32,00,000/- (Rupees One Crore Thirty Two lakhs Only).
7. Considering that both the parties have consented to the reference to the arbitral tribunal, the present petition is disposed of with the following directions:
 - i) The disputes between the parties under the said agreement are referred to the arbitral tribunal.



- ii) Mr. Shashank Garg, Advocate (Mobile No. 9811526671) appointed as Sole Arbitrator to adjudicate the disputes between the parties.
 - iii) The arbitration will be held under the aegis of the Delhi International Arbitration Centre, Delhi High Court, Sher Shah Road, New Delhi hereinafter, referred to as the 'DIAC'). The remuneration of the learned Arbitrator shall be in terms of fee rules of the DIAC Schedule or as the parties may agree.
 - iv) The learned Arbitrator is requested to furnish a declaration in terms of Section 12 of the Act prior to entering into the reference.
 - v) It is made clear that all the rights and contentions of the parties, including as to the arbitrability of any of the claim, any other preliminary objection, as well as claims on merits of the dispute of either of the parties, are left open for adjudication by the learned arbitrator.
 - vi) The parties shall approach the learned arbitrator within two weeks from today.
8. The petition is disposed of in the above terms.

DINESH KUMAR SHARMA, J

MARCH 15, 2024/AR..