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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **O.M.P. (T) (COMM.) 119/2023, I.A. 25861-62/2023**
INDIAN RAILWAY CATERING AND TOURISM
CORPORATION (IRCTC) Petitioner
Through: Ms. Aastha Gupta, Adv.

versus

ARHAM MANAGEMENT SOLUTION PRIVATE LIMITED
..... Respondent
Through: Ms. Achal Singh Bule, Mr. Hemant
Jain, Adv.

CORAM:
HON'BLE MR. JUSTICE JASMEET SINGH

ORDER
06.02.2024

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1. This is a petition under Section 14 and 15 of the Arbitration and Conciliation Act, 1996 seeking termination of the mandate of the Sole Arbitrator to adjudicate claims and counter-claims of the parties.
2. It is stated by Ms. Gupta, learned counsel for the petitioner that in the present case, the allegations of the respondent is that the Arbitrator was unilaterally appointed by the petitioner and the same is violative of the mandate of the judgment of the Hon'ble Supreme Court in "***Perkins Eastman Architects DPC & Ors. vs. HSCC (India) Ltd.***" (2020) 20 SCC 760. Relevant extract of the said judgment has been reproduced below:

"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.”

3. The respondent also in the e-mail dated 21.07.2022 questioned the impartiality of the Arbitrator and had indicated that the respondent would file a petition under Section 14 of the Arbitration and Conciliation Act.
4. In this view of the matter, both the parties are agreeable for appointment of a fresh arbitrator in place of Mr. Vinod Asthana appointed as an Arbitrator *vide* order dated 24.12.2020.
5. Since the Arbitrator was unilaterally appointed by the petitioner and since the respondent is objecting to the same, the petition is allowed in view of the judgment of Hon’ble Supreme Court in ***Perkins Eastman Architects DPC & Ors. (supra)***
6. The petition is allowed and disposed of with the following directions:



- i) Ms. Manisha (Adv.) (Mob. No. 9811941496) is appointed as a Sole Arbitrator to adjudicate the disputes between the parties.
- ii) 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 the Fourth Schedule of the Arbitration & Conciliation Act, 1996.
- iii) The learned Arbitrator is requested to furnish a declaration in terms of Section 12 of the Act prior to entering into the reference.
- iv) 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.
- v) The parties shall approach the learned Arbitrator within two weeks from today.

JASMEET SINGH, J

FEBRUARY 6, 2024/DM

Click here to check corrigendum, if any