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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **ARB.P. 1/2024**

DR. ARUN KUMAR SINGH Petitioner
Through: Mr. Sanjay Gupta, Adv.
versus

SH. ANURUDDH KUMAR Respondent
Through: Mr. Narender Bhandari, and Ms.
Devagya Kainth, Advs. (M.
9313362890)

CORAM:
JUSTICE PRATHIBA M. SINGH

ORDER
% **09.02.2024**

1. This hearing has been done through hybrid mode.
2. This is a petition under Section 11(6) of the Arbitration and Conciliation Act, 1996, has been filed by the Petitioner- Dr. Arun Kumar Singh, seeking the appointment of a Sole Arbitrator in terms of the arbitration clause contained in the Lease Agreement dated 3rd February, 2020. The said Lease Agreement had been entered into between the parties in respect of the shop bearing number S- 115, on the second floor of the building V3S East Centre, situated at Plot No. 12, Laxmi Nagar District Centre, Delhi-110092.
3. The submission of Id. Counsel for the Petitioner is that the Petitioner had earlier appointed the Sole Arbitrator in terms of Clause 14 of the Lease Agreement. However, in view of the judgment delivered by the Supreme Court in *Perkins Eastman Architects DPC & Anr. v. HSCC (India) Ltd, 2019/INSC/1285*, the Id. Arbitrator has terminated the reference. Hence this petition.



4. The Court has heard Id. Counsel for the Petitioner and perused the record.

5. The arbitration clause of the Lease Agreement clearly stipulates that initially; parties need to attempt to resolve disputes through good faith consultation. The said Arbitration clause specifies that disputes concerning the interpretation or implementation of the Lease Agreement shall be referred to a Sole Arbitrator appointed by the Lessor. Clause 14 of the Lease Agreement in respect of the subject property is set out below:

“14. ARBITRATION

14.1 The Parties agree that they shall attempt to resolve through good faith consultation, any dispute or difference between any of the Parties in respect of or concerning or connected with the interpretation or implementation of this Lease Agreement or arising out of this Lease Agreement, and such consultation shall begin promptly after a Party has delivered to another Party a written request for such consultation.

14.2 In the event that the Parties have been unable to resolve a dispute within a period of Thirty (30) days in accordance with the mechanism provided in Section 15.1, such dispute shall be finally settled according to the procedures set forth in Section 15.3.

14.3 In the event of any dispute or difference between any of the Parties in respect of or concerning or connected with the interpretation or implementation., of this Lease Agreement or. arising out of this, Lease Agreement, such dispute or difference shall be referred to the sole" arbitrator to be appointed by the Lessor and such arbitration proceedings shall be conducted in accordance with' the provisions of the Arbitration and Conciliation Act, 1996.

14.4 The arbitration proceedings shall be held in New Delhi and the language for such arbitration shall be English.

14.5 The decision of such arbitration shall be binding



and conclusive upon the Parties and may be enforced in any court of competent jurisdiction.

14.6 The Parties to the arbitration shall equally share the costs and expenses of any such arbitration.

14.7 The existence of any dispute(s) or difference(s) or initiation or continuance of the arbitration proceedings shall not permit the Parties to postpone or delay the performance by the Parties to the arbitration of their respective obligations pursuant to this Lease Agreement. If court proceedings to stay litigation or compel arbitration are necessary, the Party who unsuccessfully opposes such proceedings shall pay all associated costs, expenses and attorney's fees, which are reasonably incurred by the other party to the arbitration.

14.8 The provisions contained in this Article 15 shall survive termination of this Lease Agreement.”

6. However, even after the reference to the Sole Arbitrator, vide letter dated 20th November, 2023 in terms of the decision of the Supreme Court in ***Perkins Eastman Architects (supra)***, the Sole Arbitrator terminated the Arbitral Proceedings. As per the said decision of the Supreme Court, the appointment of a Sole Arbitrator by one of the parties involved in the dispute, especially if that party is also a participant in the dispute is not permissible, as it compromises the essential requirement of impartiality in the arbitration process. The relevant extract of the said decision is set out below:

“16. But, in our view that has to be the logical deduction from TRF Limited. Paragraph 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 (Act 3 of 2016) and recognised by the decision of this Court in TRF Limited.”*

7. Vide order dated 3rd January, 2024, the Court observes that advance notice has been served upon the Respondent. However, there is no appearance of the Respondent. It is submitted by Id. Counsel for the Petitioner that the Respondent did not appear even before the Sole Arbitrator who was earlier appointed.

8. Id. counsel for the Respondent has appeared virtually, and submits that he seeks time to file the reply. Considering the nature of the matter, no reply would be necessary as the Arbitrator himself has terminated the reference and thus a fresh Arbitrator would have to be appointed by this Court.

9. Accordingly, **Justice P.S. Teji (Retd) (M:9910384615)** is appointed as the Arbitrator. The parties are free to agree upon the institution where they wish to conduct the arbitration proceedings. The fee of the Id.



Arbitrator shall be as per the Fourth Schedule of the Act.

10. The present petition, along with all applications, is disposed of in the above terms.

PRATHIBA M. SINGH, J.

FEBRUARY 09, 2024

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