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

% ***Date of decision: 03rd October, 2024***

+ **FAO 317/2024 & CM APPL. 58123-58125/2024**

M/S GTL INFRASTRUCTURE LTD.Appellant

Through: Mr. Ankit Kumar, Advocate.

versus

BABU LAL YADAVRespondent

Through:

CORAM:

HON'BLE MR. JUSTICE MANOJ JAIN

J U D G M E N T (oral)

1. The appellant is defending a suit for recovery. It moved an application under Section 8 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as 'said Act') which has been dismissed.
2. It is in the aforesaid backdrop that the present appeal has been filed under Section 37 of said Act.
3. This Court has gone through the impugned order and it is quite evident that the application under Section 8 of the Act has, primarily, been dismissed on the ground that the arbitration clause talks about unilateral appointment of the arbitrator by the appellant herein which is in teeth of *Perkins Eastman Architects DPC & Anr. vs. HSCC (India) Ltd., 2019 SCC OnLine 1517*.
4. Though, the agreement in question has not been placed on record but admittedly such clause pertaining to dispute resolution, which is stated to be



Clause 11 of the Agreement dated 26.12.2008 reads as under:

“11. DISPUTE RESOLUTION AND APPLICABLE LAWS

In the event of any dispute arising by and between the parties hereto, the same shall be amicably resolved by Conciliation, failing which, by Arbitration conducted by a sole arbitrator duly nominated by the Licensee, in accordance with the provisions of the Arbitration and Conciliation Act, 1996 (As amended) and in case of death refusal neglect or incapability of the appointed arbitrator to act as an Arbitrator then the same shall be referred to the Sole Arbitrator to be appointed by the Licensee, whose decision shall be binding upon both the parties. The venue of the Arbitration shall be Delhi. The decision of the arbitrator shall be final and binding on the parties. All disputes shall be subject to jurisdiction of Delhi Courts. The governing law shall be laws of India.”

5. Section 8 of said Act reads as under:

“8. Power to refer parties to arbitration where there is an arbitration agreement.

(1) A judicial authority, before which an action is brought in a matter which is the subject of an arbitration agreement shall, if a party to the arbitration agreement or any person claiming through or under him, so applies not later than the date of submitting his first statement on the substance of the dispute, then, notwithstanding any judgment, decree or order of the Supreme Court or any Court, refer the parties to arbitration unless it finds that prima facie no valid arbitration agreement exists.

(2) The application referred to in sub-section (1) shall not be entertained unless it is accompanied by the original arbitration agreement or a duly certified copy thereof:

Provided that where the original arbitration agreement or a certified copy thereof is not available with the party applying for reference to arbitration under sub-section (1), and the said agreement or certified copy is retained by the other party to that agreement, then, the party so applying shall file such application along with a copy of the arbitration agreement and a petition praying the Court to call upon the other party to produce the original arbitration agreement or its duly certified copy before that Court.



(3)Notwithstanding that an application has been made under sub-section (1) and that the issue is pending before the judicial authority, an arbitration may be commenced or continued and an arbitral award made.”

6. It is very much obvious and apparent from the bare perusal of the Section 8 of the Act that the Court can refer the parties to arbitration only where a “*valid arbitration agreement*” exists.

7. It is no longer *res integra* that unilateral appointment of arbitrator is not permissible in the eyes of law. Learned Trial Court has also extensively quoted relevant observation given in *Perkins Eastman Architects (supra)*.

8. It is also admitted position that, eventually, if an award is even passed by any such arbitrator, appointed unilaterally and in violation of the aforesaid settled legal position as enumerated in *Perkins Eastman Architects (supra)*, such award would have no enforceability and validity in the eyes of law.

9. Therefore, since there was no valid arbitration agreement between the parties, learned Trial Court was fully justified in dismissing the above said application moved under Section 8 of said Act.

10. Consequently, the present appeal is hereby dismissed *in limine*.

(MANOJ JAIN)
JUDGE

OCTOBER 03, 2024/ssc