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

+ **O.M.P. (T) (COMM.) 142/2024**

GOOD YEAR SECURITY SERVICES REGDPetitioner

Through: Mr. Ashutosh Kumar Singh and Mr.
Kaustubh Sinha, Advocates.

versus

PUBLIC WORKS DEPARTMENT GOVT. OF NCT OF DELHI

.....Respondent

Through: Ms Ishita Pandey, Mr. Anuj
Aggarwal, Mr. Siddhant Dutt and Mr.
Yash Upadhyay, Advocates.

CORAM:

HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

ORDER

16.12.2024

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1. The Petitioner has approached this Court under Section 15 of the Arbitration and Conciliation Act, 1996 seeking appointment of a substitute Arbitrator to adjudicate on the disputes which have arisen between the parties under the Agreement for providing Clerical staff, Drivers, Multi Tasking Staff, House Keeping Staff.

2. It is stated by the learned Counsel for the Petitioner that after entering into the agreement and accepting the tender by the Petitioner on 26.10.2015, disputes arose between the parties due to non-payment of money and the Petitioner herein *vide* letter dated 06.06.2017 requested the Respondent to appoint the Arbitrator and the Respondent herein *vide* Order dated 18.12.2017 unilaterally appointed Sh. K. K. Peshin, Retd. ADG, CPWD, as the sole Arbitrator to adjudicate on the disputes which have arisen between the Petitioner and the Respondent. It is stated that the Sole Arbitrator *vide*

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order dated 04.05.2019 unilaterally decided the arbitral fee in accordance with the IVth schedule of the Arbitration Act. It is stated that the mandate of the sole arbitrator was terminated on 09.12.2019 as per Section 29A(3) of the Arbitration Act. It is stated that the Petitioner filed a Suit, being CS SCJ 983/2022, before Tis Hazari Courts, seeking a direction to the learned Sole Arbitrator to perform his duties. It is stated that the said Suit was rejected *vide* Order dated 11.05.2022 under Order VII Rule 11 of the CPC. The Petitioner has, thereafter, approached this Court by filing the present Petition.

3. Learned Counsel for the Respondent states that the present Petition is barred by limitation. He states that since the mandate of the Sole Arbitrator was terminated as per Section 29A(3) of the Arbitration Act due to efflux of time, the Petition for appointment of a substitute Arbitrator ought to have been filed within three years of termination of the Sole Arbitrator. He states that even after accounting for the time that has been granted by the Apex Court in Cognizance for Extension of Limitation in RE, (2022) 3 SCC 117, the present Petition is barred by time.

4. Heard the Counsels and perused the material on record.

5. The present petition is one under Section 15 of the Arbitration & Conciliation Act for appointment of a substitute Arbitrator. The instant petition has been filed by the Petitioner since the unilateral appointment of the Arbitrator by the Respondent is hit by the judgment passed by the Apex Court in Perkins Eastman Architects DPC & Anr. v. HSCC (India) Limited, (2020) 20 SCC 760. It is settled that even award passed by an Arbitrator who has been appointed unilaterally by a party can be set aside under Section 34 of the Arbitration & Conciliation Act as the unilateral



appointment goes to the very root of impartiality.

6. The argument of the learned Counsel for the Respondent that since the mandate has been terminated, the present petition is barred by limitation, cannot be accepted.

7. In SK Engineering and Construction Company India v. Bharat Heavy Electricals Ltd., **2023 SCC OnLine Del 7575**, the Apex Court has held that while construing an arbitration agreement, the Court must lean in favour of giving effect to the arbitration agreement between the parties as the legislative object and intent of the framers of the Statute is to encourage arbitration. In Intercontinental Hotels Group (India) (P) Ltd. v. Waterline Hotels (P) Ltd., **(2022) 7 SCC 662**, the Apex Court has also held that “*when in doubt, do refer*” and has observed as under:

“19. At the outset, we need to state that this Court's jurisdiction to adjudicate issues at the pre-appointment stage has been the subject-matter of numerous cases before this Court as well as the High Courts. The initial interpretation provided by this Court to examine issues extensively, was recognised as being against the pro-arbitration stance envisaged by the 1996 Act. Case by case, Courts restricted themselves in occupying the space provided for the arbitrators, in line with party autonomy that has been reiterated by this Court in Vidya Drolia v. Durga Trading Corpn. [Vidya Drolia v. Durga Trading Corpn., (2021) 2 SCC 1 : (2021) 1 SCC (Civ) 549] , which clearly expounds that Courts had very limited jurisdiction under Section 11(6) of the Act. Courts are to take a “prima facie” view, as explained therein, on issues relating to existence of the arbitration agreement. Usually, issues of arbitrability/validity are matters to be adjudicated upon by arbitrators. The only narrow exception carved out was that Courts could adjudicate to “cut the deadwood”. Ultimately the Court held that the



watchword for the Courts is “when in doubt, do refer”.

8. Undisputedly, there is an arbitration clause in the agreement entered into between the parties.
9. In view of the above, applying the principle of “*when in doubt refer*”, this Court is inclined to appoint Justice Talwant Singh, Former Judge of this Court, (Mob No.9910384657) as a Sole Arbitrator to adjudicate on the disputes between the Parties.
10. The issue as to whether the claim of the Petitioner is barred by limitation or not would be decided by the Arbitrator.
11. The arbitration would take place under the aegis of the Delhi International Arbitration Centre (DIAC) and would abide by its rules and regulations. The learned Arbitrator shall be entitled to fees as per the Schedule of Fees maintained by the DIAC.
12. The learned Arbitrator is also requested to file the requisite disclosure under Section 12(2) of the 1996 Act within a week of entering on reference.
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 their merits, in accordance with law.
14. Needless to say, nothing in this order shall be construed as an expression of this Court on the merits of the contentions of the parties.
15. The petition is disposed of along with pending application(s), if any.

SUBRAMONIUM PRASAD, J

DECEMBER 16, 2024

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