

\$~8(2021)

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

%

Date of decision: 26.10.2021

+ ARB.P. 830/2021

SIVANSSH INFRASTRUCTURE DEVELOPMENT PVT. LTD.

..... Petitioner

Through: Mr. Navin Kumar, Ms. Rashmeet
Kaur & Ms. Priya Goyal, Advocates

Versus

ARMY WELFARE HOUSING ORGANIZATION

..... Respondent

Through: Mr. A.K.Tewari & Mr. Tushar Upreti,
Advocates

CORAM:

HON'BLE MR. JUSTICE SURESH KUMAR KAIT

JUDGMENT (oral)

1. The present petition has been filed by petitioner seeking appointment of Sole Arbitrator under the provisions of Sections 11(5) and 11(6) of the Arbitration and Conciliation Act, 1996.

2. Petitioner-company registered under the provisions of Companies Act, 1956 claims to be engaged in construction related activities including construction of various industrial, institutional, commercial as well as residential projects in India. Respondent is a Society registered under the Societies Registration Act, 1860.

3. According to petitioner, in December, 2015, respondent invited bids for development of a Residential Complex to be spread over an area of 3.57 acres (approx.) for construction of 220 dwelling units to be constructed in 5 Towers located at Sector-6A, Vrindavan Awas Yojna, Lucknow, to which petitioner had submitted its bid, which was accepted by the respondent vide Acceptance Letter dated 02.06.2016. The total value of the awarded project/Contract Price according to petitioner was Rs.100,59,48,977.35.

4. Further, as per Work Order dated 28.06.2016 issued by the respondent, petitioner was instructed to commence the work at the Site on the even date with a Completion Period of 30 months expiring on 27.12.2018. However, since respondent failed to handover the site to the petitioner, a Revised Work Order dated 19.06.2017 was issued by the respondent, for petitioner to commence the project on 12.08.2016 with the Completion Date as 11.02.2019.

5. During the course of hearing, learned counsel for petitioner has averred that in view of the various delays and defaults on the part of the respondent, the contract completion was delayed and consequently, the petitioner had to seek extension of the project with Completion Period on various occasions upto to 31.05.2019 and by then, petitioner completed the

work. However, thereafter, certain disputes arose between the parties with regard to handing over of the dwelling units, issuance of completion certificate, defects liability period, release of bank guarantees furnished by the petitioner etc. It is submitted that since respondent had been unwilling to release the longstanding dues of the Petitioner, Petitioner invoked arbitration vide letter dated 22.06.2021 under Clause 174 of GCC and further, vide letter dated 22.06.2021 suggested the names of three eminent persons for the Respondent to choose one person to act as the Sole Arbitrator for adjudicating the disputes between the parties. In response thereto, vide letter dated 06.07.2021 Respondent instead of choosing one therefrom, called upon the Petitioner to choose from its own list of four people. However, vide letter dated 13.07.2021, petitioner conveyed its unacceptance to the respondent's proposal. The Chairman of the respondent in complete neglect of petitioner's letter dated 13.07.2021, unilaterally appointed Mr. S.S. Bansal, ADG (Arbitration Cell), Military Engineering Service (MES) as the Sole Arbitrator. Thereafter, petitioner received a letter dated 03.08.2021 from the Mr. S.S. Bansal calling upon the parties to submit to his jurisdiction as the Sole Arbitrator.

6. Learned counsel for petitioner submitted that appointment of Mr. S.S.

Bansal as Arbitrator is in violation of dictum of Hon'ble Supreme Court in ***Perkins Eastman Architects DPC &Anr. vs. HSCC (India) Ltd. 2019 SCC Online SC 1517.***

7. Notice issued.

8. Mr. A.K.Tewari, Advocate, appearing on behalf of petitioner accepts notice and submits that upon being informed about filing of the present petition, the learned Arbitrator has stayed the proceedings. Learned counsel has disputed the claims raised in the present petition, however, existence of arbitration clause is not disputed.

9. Pertinently, the arbitration agreement between the parties and invocation of arbitration are not disputed by the parties. However, unilateral appointment of Arbitrator by the respondent is rejected, as no party can be permitted to unilaterally appoint an Arbitrator, as the same would defeat the purpose of unbiased adjudication of dispute between the parties.

10. The Hon'ble Supreme Court in ***Perkins Eastman Architects DPC &Anr. vs. HSCC (India) Ltd. 2019 SCC Online SC 1517*** has categorically stated that *"in cases where 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.”

11. The afore-noted dictum of Hon’ble Supreme Court in ***Perkins Eastman (Supra)***, has been followed by Coordinate Benches of this Court in ***Proddatur Cable Tv Digi Services Vs. Siti Cable Network Limited*** 2020 SCC OnLine Del 350 and ***VSK Technologies Private Limited and Others Vs. Delhi Jal Board*** 2021 SCC OnLine Del 3525 in unequivocal terms.

12. In view of the above, the present petition is allowed. Accordingly, **Mr. Justice (Retd.) B.D.Ahmed (Mobile: 7042205786)** is appointed sole Arbitrator to adjudicate the dispute between the parties. The arbitration shall be conducted under the Delhi International Arbitration Centre (DIAC).

13. The fee of the Arbitrator shall be in accordance with the Schedule of Fees prescribed under the Delhi International Arbitration Centre (DIAC) (Administrative Cost and Arbitrators Fees) Rules, 2018.

14. The learned Arbitrator shall ensure compliance of Section 12 of Arbitration and Conciliation Act, 1996 before commencing the arbitration.

15. With aforesaid directions, the present petition is accordingly disposed of.

16. A copy of this order be sent to the learned Arbitrator as well as Delhi

International Arbitration Centre (DIAC) for information.

(SURESH KUMAR KAIT)
JUDGE

OCTOTBER 26, 2021

r

