

(2022) 01 DEL CK 0142

In the Delhi High Court

Case No : Arbitration Petition No. 1180 Of 2021

Evam Constructions Pvt Ltd.

APPELLANT

Vs

WEI Grow Hotel Concepts Pvt Ltd Kylin & Ors

RESPONDENT

Date of Decision : 20-01-2022

Acts Referred:

Arbitration And Conciliation Act, 1996 — Section 11, 12, 29A, 29A(4)

Citation : (2022) 01 DEL CK 0142

Hon'ble Judges : Suresh Kumar Kait, J

Bench : Single Bench

Advocate : Manish Kumar

Final Decision : Disposed Of

Judgement

Suresh Kumar Kait, J

1. The present petition has been filed by the petitioner under Section 11 of the Arbitration and Conciliation Act, 1996 seeking appointment of Arbitrator

for adjudication of disputes with the respondents.

2. At the outset, learned counsel for petitioner has submitted that defendants No.2 & 3 are proforma parties and the present petition is pressed against defendant No.1 only.

3. As per office report, defendant No.1 is served through ordinary process, however, none has appeared its behalf. It seems respondent No.1 has nothing to oppose in the present petition.

4. Petitioner claims to be a Contractor, who has implemented civil and interior related works at Kylin Restaurant, 309 Ambience Mall, Vasant Kunj, New Delhi, i.e. the premises of respondent in terms of Work Order dated 10.08.2018.

5. According to petitioner, pursuant to the aforesaid Work Order dated 10.08.2018, petitioner commenced the work on the said premises and on

14.09.2012 petitioner submitted a proforma of works to the respondent and certain disputes arose with regard to payment of Rs.1,67,41,398.04/-

between the parties. Thereafter, by virtue of notice of demand dated 21.02.2011 petitioner invoked arbitration and in terms of arbitration clause called

upon Mr. Sumeet Nath, Architect of respondent-company to act as sole Arbitrator. However, since the learned Arbitrator did not commence the

arbitration proceedings, petitioner sent e-mails dated 19.03.2011 and 17.07.2012 reminding him of delay in arbitration proceedings. Thereafter, on

23.07.2012 respondent also sent a letter to the Arbitrator to commence arbitration proceedings and the learned Arbitrator vide its letter dated

21.08.2012 intimated the parties the first date of hearing as 04.09.2012.

6. According to petitioner, on 14.09.2012 petitioner submitted its claims to the tune of Rs.1,67,41,398.04/- with the learned Arbitrator, however,

thereafter arbitration did not proceed further. Petitioner also claims to have given reminders to the learned Arbitrator but to no avail Thereafter,

petitioner sent a legal notice dated 12.03.2019 to the respondent terminating the mandate of learned Arbitrator i.e. Mr. Sumeet Nath and appointed

Mr.Pradeep Gaur, Advocate in his substitution. Since the petitioner again did not receive any reply to the said legal notice dated 12.03.2019, a petition

[OMP (I) comm. No- 6/2019] before the learned trial court for substitution of the Arbitrator, which was dismissed on 05.02.2021 holding that in view

of Section 29A (4) of Arbitration Act there was no ground to terminate the mandate of arbitral tribunal and also that under the provisions of Section 11

of the Act, remedy lies before this Court. Hence, the present petition.

7. Upon hearing and perusal of petition and material placed on record, this Court finds that Clause-14 of the Work Order dated 10.08.2012

contemplates that disputes between the parties shall be referred to designated Architect / Consultant of the respondent. Further, petitioner by virtue of

notice of demand dated 21.02.2011 invoked arbitration and also appointed the Architect of respondent as Arbitrator, who commenced the arbitral

proceedings, however, arbitral proceedings did not progress and thereby, the arbitral tribunal failed to publish the Award within the time stipulated of

twelve months under the provisions of Section 29A of the Arbitration and

Conciliation Act, 1996. Pertinently, by virtue of Honâ??ble Supreme Courtâ??s decision in Perkins Eastman Architects DPC & Anr. Vs. HSCC (India) Ltd. 2019 SCC Online SC 1517 the aforesaid Clause-14 of the Work Order dated 10.08.2012 has become null and void, as in the said decision it has been categorically stated that â??no single party can be permitted to unilaterally appoint the Arbitrator, as it would defeat the purpose of unbiased adjudication of dispute between the partiesâ?. In view of decision in Perkins Eastman (Supra), even the proposal of petitioner appointing Mr. Pradeep Gaur, Advocate as Arbitrator is also thereby rejected.

Furthermore, by virtue of Clause-15 of the Work Order dated 10.08.2012, the jurisdiction of all legal matters shall be Delhi.

8. Accordingly, this Court appoints Mr. Sukhdev Singh, DHJS (Retd.) (Mobile: 9910384682) the sole Arbitrator to adjudicate the dispute between the parties.

9. The fee of the learned Arbitrator shall be governed by the Fourth Schedule of the Arbitration and Conciliation Act, 1996.

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

11. The present petition and pending application, if any, are accordingly disposed of.