
(2021) 05 DEL CK 0113

In the Delhi High Court

Case No : Original Miscellaneous Petition (T) (COMM.) No. 9 Of 2021,
Miscellaneous Application No. 862 Of 2021

M S FAM Bhagat Infratech Pvt Ltd

APPELLANT

Vs

Alok Kumar Agarwal & Ors

RESPONDENT

Date of Decision : 11-05-2021

Acts Referred:

Arbitration And Conciliation Act, 1996 — Section 12(2), 12(5), 14(1)

Citation : (2021) 05 DEL CK 0113

Hon'ble Judges : C. Hari Shankar, J

Bench : Single Bench

Advocate : Ateendra Saumya Singh, Mohd. Wasiq Khan, Changhez Khand, Dr. Farrukh Khan, Nalin Tripathi

Final Decision : Disposed Of

Judgement

C. Hari Shankar, J

1. Clauses 9.1 and 9.2 of the agreement, dated 23rd August, 2011, between the petitioner and the respondents in the present case reads as under:

â??9.1 That in the event of any dispute or question arising out in between the parties hereto, such dispute shall be referred to the sole

arbitration of an Arbitrator to be nominated by the FIRST PARTY upon, whose decision/award shall be final and binding upon the parties

hereto. The FIRST PARTY and SECOND PARTY agree not to move or proceed against the award of such arbitrator(s).

9.2 The place of arbitration shall be Delhi/New Delhi.â??

2. Clearly, in view of law laid down by the Supreme Court in Perkins Eastman Architects DPC v. HSCC (India) Limited 2019 SCC OnLine SC 1517

and Bharat Broadband Network Ltd. v. United Telecoms Ltd. (2019) 5 SCC 755 as

well as Section 12(5) of the Arbitration and Conciliation Act, 1996, read with the VII Schedule thereto, Clause 9.1 is rendered unsustainable in law, as it confers exclusive jurisdiction to one of the parties to the arbitration agreement to appoint the arbitrator.

3. Mr. Nalin Tripathi, learned Counsel for the respondent, submits that he has no objection to another arbitrator being appointed in place of the arbitrator who is in seisin of the dispute between the parties.

4. Accordingly, without meaning any disrespect to Honâ??ble Mr Justice Rajesh Tandon (retired), the learned Arbitrator who is in seisin of the

dispute between the parties, this Court is constrained to hold that, as the appointment of the learned Arbitrator has been made in accordance with

Clause 9.1 of the Builderâ??s Agreement, the learned Arbitrator is, by operation of the judgment of the Supreme Court in Perkins Eastman

Architects DPC¹ and Bharat Broadband Network Ltd.² as well as Section 12(5) of the 1996 Act, rendered de jure incapable of performing as an

arbitrator, within the meaning of Section 14(1) of the 1996 Act.

5. Accordingly, the mandate of the learned Arbitrator stands terminated.

6. Learned Counsel for the parties have left it to the court to appoint another arbitrator to arbitrate on the dispute.

7. Accordingly, this Court appoints Honâ??ble Mr. Justice Vinod Goel (Retd.) (Cell No: 9910384637 and Email ID: justicevinodgoel@gmail.com) as

the learned arbitrator to arbitrate on the dispute between the parties, in place of Honâ??ble Mr Justice Rajesh Tandon.

8. The learned Arbitrator shall be entitled to charge fees in accordance with the IV Schedule to the 1996 Act.

9. The learned Arbitrator shall be entitled to continue the proceedings from the stage at which they stood before Honâ??ble Mr. Justice (Retd.)

Rajesh Tandon.

10. The learned Arbitrator would also furnish the requisite disclosure under Section 12(2) of the 1996 Act within a week of entering on the reference.

11. This petition stands disposed of in the aforesaid terms.