
(2021) 05 DEL CK 0151

In the Delhi High Court

Case No : Original Miscellaneous Petition (T) (COMM.) No. 12 Of 2021

Samsung India Electronics Private Ltd APPELLANT

Vs

Comwen Information Technologies Pvt. Ltd RESPONDENT

Date of Decision : 19-05-2021

Acts Referred:

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

Citation : (2021) 05 DEL CK 0151

Hon'ble Judges : C. Hari Shankar, J

Bench : Single Bench

Advocate : Dr. Amit George, Rajeev Kumar, Amol Acharya, Rayadurgam Bharat, P. Harold

Final Decision : Disposed Of

Judgement

C. Hari Shankar, J

1. There has been no appearance in this case on behalf of the respondent, despite service of notice.

2. It is seen that, even before the learned Arbitrator, the respondent has continuously been defaulting in appearance.

3. As such, I have heard Dr. Amit George, learned Counsel for the petitioner, and perused the documents.

4. This is a somewhat peculiar case in which the petitioner, having itself appointed the Arbitrator, a practicing Advocate of this Court, seeks

substitution of the Arbitrator, citing Section 12(5) of the Arbitration and Conciliation Act, 1996 (the 1996 Act, in short) read with the VII

Schedule thereto and the judgments of the Supreme Court in Perkins Eastman Architects DPC v. HSCC (India) Ltd. 2019 SCC OnLine SC 1517,

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

Haryana Space Application Centre v. Pan India Consultants Pvt.
Ltd (2021) 3 SCC 103.

5. The arbitration agreement between the parties reads thus:

â??8. Â Dispute Resolution

a. In case of any dispute or difference (â??Disputeâ??) between the Parties, the Party seeking to initiate the dispute resolution procedure set out

below shall give Notice to the other Party. A meeting or series of meetings (which may include conference calls) shall be held promptly among

designated representatives of the Parties, who shall have authority to resolve the dispute or claim, in an attempt to negotiate a resolution of the dispute or claim.

b. In the event a dispute or claim is not resolved by the designated representatives within thirty (30) days from the date the dispute is first raised, then

any such dispute or difference of any nature whatsoever, any claim, cross-claim, counter claim or set off or regarding any right, liability, act, omission

on account of any of the Parties hereto arising out of or in relation to this Agreement or any matter incidental thereto shall be referred to the sole arbitrator to be nominated by the Director of SIEL.

c. In the event of the arbitrator to whom the matter is originally referred, vacating his office or being unable or refusing to act for any reason, the

Director of SIEL at the time of vacation of office or inability or refusal to act, shall appoint another person to act as the arbitrator from the stage at

which it was left by his predecessor.

d. It is hereby expressly agreed that the powers of the arbitrator appointed in the matter shall include the power to make interim award/ awards as the

circumstances of the case may justify; to appoint a receiver, commissioner or custodian, whatever name called to take the possession of property in

dispute/unpaid sales during the pendency of the proceedings; and subject to such final order as may be passed by the Arbitrator and shall also have the

power to issue such further orders from time to time as he may deem fit.

e. The award of the arbitrator shall be final, conclusive and binding on all the Parties to the Agreement.

f. The venue of the arbitration shall be at New Delhi.

g. The Arbitration shall be conducted in English language and in accordance with the provisions of Arbitration and Conciliation Act, 1996 or any

modifications thereof.

h. All such disputes, which may arise out of Arbitration proceedings mentioned hereinabove, are subject to jurisdiction of competent Courts in Delhi

only.â??

6. Dr. George, learned Counsel for the petitioner, submits that, though the Arbitrator was appointed by his client, as the appointment was made in

accordance with Clause 8(b) of the arbitration agreement, which infracts the law laid down by the Supreme Court in Perkins Eastman Architects

DPC 2019 SCC OnLine SC 1517, Bharat Broadband Network Ltd (2019) 5 SCC 755. and Haryana Space Application Centre (2021) 3 SCC 103, in

order to avoid any controversy at a later stage, his client has itself moved the present petition for substitution of the Arbitrator.

7. Given the law laid down in Perkins Eastman Architects DPC1 and other cases cited supra and the mandate of Section 12(5) of the 1996 Act read

with the VII Schedule thereto, it is obvious that the Arbitrator could not be appointed unilaterally by the petitioner. The appointment of the Arbitrator

presently in seisin of the disputes is, therefore, not sustainable and is accordingly set aside.

8. It is made clear that, by doing so, this Court does not even remotely seek to question the impartiality or competence of the Arbitrator who was

seized with the disputes. His mandate unfortunately stands terminated only because of the statutory provision contained in Section 12(5) and the law

laid down by the Supreme Court in that regard.

9. Learned Counsel for the petitioner submits that, as the amount in dispute is relatively small, the matter may be referred to Delhi International

Arbitration Centre (DIAC), which could appoint an arbitrator suitably competent to deal with the matter.

10. Accordingly, this petition is disposed of by referring the parties to the Delhi International Arbitration Centre (DIAC), who would appoint an

appropriate arbitrator, to arbitrate on the disputes between the parties.

11. Let a copy of this order be e-mailed to learned Counsel for the parties as well as to the parties themselves at their respective e-mail Ids as soon as

it is ready, for compliance.

12. The petition stands disposed of as above.