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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
% **Date of Decision: 02nd May, 2025**
+ CM(M) 3538/2024 & CM APPL. 58405/2024 & CM APPL.
58407/2024

M/S. EMGREEN IMPEX LIMITEDPetitioner
Through: Mr. Avneesh Arputham with Mr.
Ankit Sharma, Advocates.

versus

M/S. OHM PIPES PRIVATE LIMITEDRespondent
Through: Mr. Abhay Kaushik with Mr. Sachin
Jain and Ms. Himani Babbar,
Advocates.

CORAM:

HON'BLE MR. JUSTICE MANOJ JAIN

J U D G M E N T (oral)

1. Petitioner herein had filed a suit which is commercial in nature.
2. The defendant, after getting summons in the abovesaid suit, instead of proceeding further, filed an application under Section 8 of Arbitration and Conciliation Act, 1996.
3. Such application has been allowed by the learned Trial Court *vide* order dated 08.02.2024.
4. Such order is impugned herein.
5. Learned counsel for the petitioner submits that without prejudice to its rights, it does not challenge the abovesaid order with respect to appointment of Arbitrator, though, there is no validly executed *Arbitration Agreement*.
6. Notice was also issued to the opposite side for the limited purpose of appointment of an Arbitrator, with mutual consent.
7. Learned counsel for respondent/defendant appears pursuant to such notice and submits that, though, the dispute was, rightly, referred by the



learned Trial Court under Section 8 of Arbitration and Conciliation Act, 1996, there is no requirement of appointing any Arbitrator, as the claim has already become *time-barred*. He submits that such contention can always be looked into by this Court before making any formal order regarding appointment of Arbitrator.

8. Apparently, there is no consensus with respect to appointment of Arbitrator. The clause in question, however, mentions about the appointment of Arbitrator, unilaterally, which is, otherwise, in teeth of specific observation made in *Perkins Eastman Architects DPC and Anr. vs. HSCC (India) Ltd.:* (2020) 20 SCC 760

9. Learned counsel for the petitioner, however, submits that since the opposite side is not agreeable for appointment of an Arbitrator, while reserving its other rights and contentions, they would move appropriate application under Section 11(6) of Arbitration and Conciliation Act, 1996 seeking appointment of an Arbitrator.

10. The present petition stands disposed of in aforesaid terms. All the rights and contentions of the parties are left open.

11. Needless to say, it is open to petitioner to move any such application under Section 11(6) of Arbitration of Conciliation Act, 1996.

(MANOJ JAIN)
JUDGE

MAY 2, 2025/sw/JS