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IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of Reserve: August 04, 2009

Date of Order: September 03, 2009

+ Arb.P.No.268/2008

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03.09.2009

**M/S NATIONAL AGRICULTURAL COOPERATIVE MARKETING
FEDERATION OF INDIA LTD.**

.... Petitioner

Through : Mr.A.K.Singh, Adv.

Versus

M/S. ROJ ENTERPRISES (P) LTD.

.... Respondent

Through: Mr. Krishnan Venugopal, Sr. Adv. with
Mr. Abir Phukan, Adv.

JUSTICE SHIV NARAYAN DHINGRA

1. Whether reporters of local papers may be allowed to see the judgment?
2. To be referred to the reporter or not?
3. Whether judgment should be reported in Digest?

ORDER

1. By this application under Section 11 of the Arbitration and Conciliation Act, the petitioner has prayed to the Court for appointment of an Arbitrator on the ground that the petitioner invoked an arbitration clause as contained in the agreement and the respondent agreed for reference of the dispute to the Arbitrator. Thereafter, the petitioner appointed Mr. Justice V.S. Aggarwal (retired from Delhi High Court) as a sole Arbitrator to adjudicate the dispute to which respondent did not agree. The respondent, on the other hand, moved Joint Secretary, Cooperative Society, Mr. R.K. Tiwari for appointment of Arbitrator under Section 84 of Multistate Cooperative Society Act, 2002. It is

stated that Section 84 of the Multistate Cooperative Society Act, 2002 would not be applicable in this case and only the Arbitrator appointed under the agreement by the Court will have to adjudicate the dispute. Since the parties were unable to appoint the Arbitrator by mutual agreement, present application has been made.

2. In reply to the application, it is stated by the respondent that the application was not maintainable for want of territorial jurisdiction. It is submitted that only High Court at Bombay can entertain an application under Section 11. The other objection about maintainability of this application is that the arbitration clause as entered into between the parties was binding on the parties and the petitioner had not acted in accordance with the arbitration clause and the procedure provided therein. Therefore this application under Section 11 of the Arbitration and Conciliation Act should be dismissed.

3. During the pendency of this petition, this Court in order to save time of the parties had asked the parties to come to an agreement in respect of name of an Arbitrator so that dispute can be referred to the Arbitrator. The petitioner wanted an Arbitrator of New Delhi, whereas the respondent wanted an Arbitrator of Maharashtra. Therefore parties did not come to an agreement in respect of name of the Arbitrator.

4. Clause 13 of the arbitration agreement as agreed between the parties reads as under:

“13) ARBITRATION:

In the event of any dispute or difference arising between the parties to the Agreement the same shall be referred to the Indian Arbitration Council, New Delhi.”

5. In terms of the above agreement, in the event of a dispute or difference between the parties, the same was to be referred to the Indian Arbitration Council and the Indian Arbitration Council was to refer the dispute to an Arbitrator appointed by it. It is undisputed that the petitioner had not referred the dispute to the Indian Arbitration Council. It is now settled law that the procedure prescribed for appointment of Arbitrator in the arbitration agreement is binding on the parties and a party cannot approach the Court without first complying with the procedure as laid down in the agreement between the parties. In this case, the petitioner was bound to refer the dispute to the Indian Arbitration Council as provided in the agreement. It is only if the council had not acted or refused to entertain the dispute, the petitioner would have liberty to approach the Court whether at Delhi or at Bombay, as per law. I therefore consider that the present petition made under Section 11 is not maintainable. The petitioner under the arbitration agreement is obliged to approach Indian Arbitration Council first. The petition is hereby dismissed.

September 03, 2009
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SHIV NARAYAN DHINGRA J.