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IN THE HIGH COURT OF DELHI AT NEW DELHI

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ARB.P. 335/2010

M/S SEACON INFRATECH

..... Petitioner

Through : Mr. Mrityunjay Kumar and Mr.
Shantanu Kumar, Advs.

versus

PLANMAN TECHNOLOGIES (INDIA) PVT LTD

..... Respondent

Through : Mr. Gulshan Sharma, Adv.

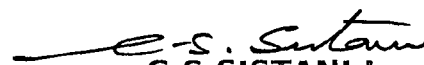
CORAM:**HON'BLE MR. JUSTICE G.S.SISTANI****ORDER****09.11.2011**

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1. This is a petition under Section 11 of Arbitration and Conciliation Act seeking appointment of Arbitrator.
2. Learned counsel for the petitioner submits that parties had entered into an agreement for hiring various facilities for better enjoyment of the occupied lease space on 29.4.2010. Counsel further submits that in terms of Clause 15 of this Agreement all disputes between the parties were to be referred to a mutually agreed Arbitrator. Counsel next submits that despite notice dated 28.6.2010 having been issued to the respondent, respondent has failed to agree for appointment of an Arbitrator.
3. Learned counsel for the respondent has opposed the present petition primarily on the ground that respondent had also entered into an agreement with M/s Akriti Garments and hiring of faculties was to be done by the respondent from the petitioner, however, possession of the property was not handed over by M/s Akriti Garments to the respondent and, thus, there was no occasion for the

respondent to take the services of the petitioner. It is thus submitted that present petition is not maintainable. Learned counsel for the respondent submits that in case this court is inclined to appoint an Arbitrator then the names suggested by the petitioner may be ignored and an independent Arbitrator should be appointed. The respondent may also be permitted to raise grounds taken in the reply filed to the present petition.

4. Accordingly, in view of the stand taken present petition is allowed. Mr. Justice C.K. Mahajan, a former Judge of this Court, (Cell No.9818000240) is appointed as a Sole Arbitrator to adjudicate upon all disputes and differences including claims and counter claims arising between the parties. It is agreed between the parties that fee of the Arbitrator shall be borne by the parties equally as per the schedule maintained by Delhi High Court Arbitration Centre subject to final award and the party who does not succeed would ultimately be responsible to pay the fee. Counsel for the petitioner has no objection. The Arbitrator shall give prior notice to the parties before commencing the proceedings.
5. Petition stands disposed of.
6. Let a copy of this order be sent directly to Arbitrator.


G.S.SISTANI,J

NOVEMBER 09, 2011

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ARB.P. 335/2010

M/S SEACON INFRATECH

Through: Petitioner
Mr. Shantanu Kumar, Advocate

versus

PLANMAN TECHNOLOGIES (INDIA) PVT LTD..... Respondent
Through: Mr. Gulshan Sharma, Advocate

CORAM:

HON'BLE MR. JUSTICE SANJEEV SACHDEVA

ORDER

01.04.2014

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IA No.4693/2014 (application for transfer on behalf of
respondent)

Learned counsel for the plaintiff submits that there are two arbitration proceedings pending involving the same property. However, the subject matter of dispute though is related but is slightly different. Learned counsel for the applicant/respondent submits that one of the proceedings have been initiated by Mr. Baldev Singh Namdhari, proprietor of claimant M/s SEACON Infratech, who is also a shareholder in M/s Akriti Garments Private Limited, which is the claimant in the other arbitral proceedings.

Learned counsel for the respondent/applicant submits that Mr. Baldev Singh Namdhari has already appeared as a witness in the case of M/s Akriti Garments Private Limited and is also appearing as a witness in claim instituted by SEACON Infratech, on account of which the said witness has to be cross-examined once again.

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Learned counsel further submits that the respondent for the purposes of cross-examination is required to rely on the evidence and cross-examination of Baldev Singh Namdhari recorded before the Delhi High Court Arbitration Centre in the proceedings instituted by M/s Akriti Garments Private Limited against the respondent. He further submits that the Delhi High Court Arbitration Centre is not providing a certified copy of the evidence and cross-examination and as such, the present application has been moved so that both the matters can be clubbed and evidence recorded in the arbitral proceedings be relied upon by the respondent herein besides further cross-examination being conducted of Baldev Singh Namdhari.

Learned counsel for the claimant has opposed the present application and has contented that in one case the evidence of claimant is already over and the evidence of the respondent is underway and at the time when the initial appointment was made of the arbitral tribunal in these proceedings, the other proceedings were already pending and no such request was made at that time that this matter should also be referred to the same arbitral tribunal.

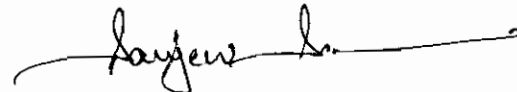
Learned counsel for the respondent/applicant submits that in case a certified copy of the examination-in-chief and cross-examination recorded in the arbitral proceedings titled M/sAkriti Garments Private Limited v. Planman Technologies, pending before the Delhi High Court Arbitration Centre is supplied to the respondent and respondent is permitted to place the same on record of the arbitral tribunal, the respondent would not press the present application seeking transfer of the present proceedings.

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To this request, the counsel for the claimant has no objection.

In view of the above, the Delhi High Court Arbitration Centre is directed to supply a certified copy of the evidence and cross-examination recorded in the case bearing title M/s.Akriti Garments Private Limited v. Planman Technologies to the parties, in case, they so apply for it. If a certified copy is so obtained and filed before the arbitral tribunal, the arbitral tribunal shall take the same into account. Learned counsel for the parties submit that the cross-examination of Mr.Baldev Singh Namdhari is underway. The respondent/applicant is permitted to further cross-examine the witness, if so, required.

With the above direction, the application stands disposed of.

Dasti under the signatures of Court Master.



SANJEEV SACHDEVA, J

APRIL 01, 2014/sv