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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ CS(OS) 1395/2010

BALISTER TYAGI

..... Plaintiff

Through: Mr. Sandeep Garg, Advocate with
Ms. Mani Solanki, Advocate with plaintiff in
person.

versus

OM PRAKASH TYAGI AND OTHERS

..... Defendants

Through: Mr. Rajesh Raina, Advocate with
Mr. Virender Tyagi, Advocate for D-1.
Mr. Anuj Aggrwal, Advocate with Ms. Disha
Saxena, Advocate for D-2 with D-2 in person.

CORAM:

HON'BLE MS. JUSTICE HIMA KOHLI

ORDER

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05.02.2015

I.A. No.4313/2013 (by D-2 under Section 8 of the Arbitration & Conciliation Act, 1996)

1. This order is in continuation of the order dated 28.1.2015. On 28.1.2015, learned counsel for the defendant No.2 had referred to the Memorandum of Understanding (MOU) dated 28.12.2005 executed by the parties to the suit and stated that it contains an arbitration clause. In response, counsel for the plaintiff had admitted that he had filed the said MOU along with some other documents and in the course of admission/denial of documents, the same has been marked as Ex.-P-1. It was also not denied by him that Clause-(viii) of the MOU, is the arbitration clause, whereunder all the parties had agreed that their disputes would be referred to the four arbitrators named therein.

At that stage, it was enquired from the counsels for the parties that since the arbitrators named in the MOU are of even number, in case of a difference of opinion, who would act as an umpire. They were also asked if they would be agreeable to appointing a sole arbitrator or three arbitrators, from amongst those named in the MOU, or a judicial officer, to arbitrate their disputes.

2. Today, counsels for the plaintiff, defendants No.1 and the defendant No.2 jointly state that they have no objection to the arbitration clause being given effect to and their *inter se* disputes being referred for arbitration. They state that Shri Paritosh Tyagi, R/o WZ-58A, Basai Darapur, New Delhi-110015, one of the arbitrators named in the MOU be appointed as the sole Arbitrator to adjudicate the said disputes.

3. The remaining defendants have filed their written statements stating *inter alia* that they do not have any right in the suit premises or the business affairs of M/s Gulab Oil Mills and they have also admitted to the execution of the MOU dated 28.12.2005.

4. In view of the aforesaid submission, the present application is allowed. As agreed by the parties, Shri Paritosh Tyagi is appointed as the sole Arbitrator to adjudicate all the disputes raised by the plaintiff and the defendants No.1 and 2.

5. The parties are directed to file their respective claims before the sole Arbitrator within four weeks, while exchanging copies thereof. The parties shall appear before the sole Arbitrator on 19.02.2015, at 2 PM for him to fix a date for conducting further proceedings. The sole Arbitrator shall fix his own fees and communicate the same to the parties who shall bear the same along with the out of pocket expenses, to the extent of 1/3rd each.

6. The application is disposed of.

CS(OS) 1395/2010

In view of the orders passed in IA 4313/2013, an application filed by the defendant No.2 under Section 8 of the Arbitration and Conciliation Act, 1996, wherein the parties have agreed to refer their entire disputes, including those that are the subject matter of the present suit, to Shri Paritosh Tyagi, the sole Arbitrator, in terms of the MOU dated 28.12.2005, the suit is disposed of, while leaving the parties to bear their own costs.

DASTI to the counsel for the plaintiff for communicating the order to the Sole Arbitrator.

HIMA KOHLI, J

FEBRUARY 05, 2015

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