

**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

**CR No.831 of 2014
Date of decision:05.05.2016**

M/s Ambience Private Limited ... Petitioner

Vs.

R.P.Malhan and Company Pvt. Ltd. ... Respondent

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

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

Present:- Mr. Rahul Garg, Advocate
for the petitioner.

Mr. R.K.Handa, Advocate
for the respondent.

AMIT RAWAL J. (Oral)

The present revision petition is directed against the impugned order dated 02.09.2013 (Annexure P-9), whereby, an application filed under Sections 5 and 8 of the Arbitration and Conciliation Act, 1996 (in short "1996 Act") for referring the matter before the Arbitrator, in view of the arbitration clause, has been declined.

The prime reasons for declining of the prayer is that as per the terms and conditions, Arbitrator would be Company Secretary of the petitioner-company. There is no dispute with regard to the resolution of the dispute by way of arbitration in view of Clause 49 of

terms and conditions of application form which reads thus:-

“49. All or any disputes arising out of the or touching upon or in relation to the terms of this application and/or Apartment Buyer's Agreement including the interpretation and validity of the terms thereof and the respective rights and obligations of the parties shall be settled amicably by mutual discussion failing which the same shall be settled through arbitration. The arbitration proceedings shall be governed by the Arbitration and Conciliation Act, 1996 or any statutory amendments/modifications thereof for the time being in force. The arbitration proceedings shall be held at an appropriate location in Ambience Island Township, Gurgaon, Haryana by a sole arbitrator who shall be the Company Secretary of the Company or in his absence a person having equivalent or similar professional qualification appointed with or by the Company. The Apartment Allottee hereby confirms that he/she shall have no objection to this appointment. The Courts at Gurgaon along and the Punjab and Haryana High Court at Chandigarh alone shall have the jurisdiction in all matters arising out of/touching and/or concerning this application and/or the Apartment Buyer's Agreement regardless of the place of execution of this application which is deemed to be at New Delhi.”

Both the learned counsel for the parties on instructions from their clients are ad idem that instead of having adjudication by the Company Secretary, the matter may be referred to the independent Arbitrator.

Accordingly, in view of the aforementioned, I am of the view that once the parties had undertaken to resolve all the dispute through independent Arbitrator. It would be farcical exercise in relegating the parties, to file an application under Section 11(6) of 1996 Act seeking appointment of Arbitrator and to avoid the costs of litigation, much less, the fact that parties are ad idem to resolve the dispute subject to the fact that respondent take up all possible pleas vis-a-vis jurisdiction and limitation, I appoint Hon'ble Mr. Justice Kailash Gambhir, former Judge of the Delhi High Court as Arbitrator subject to his convenience and acceptance to the appointment on account of fact that he is settled in Delhi and place of arbitration is also Gurgaon/Delhi. On receipt of acceptance, Hon'ble Arbitrator shall enter into reference by calling upon the parties to adjudicate the dispute. Both the parties shall be at liberty to raise their respective claims vis-a-vis jurisdiction and limitation, in accordance with law. Fixing of the fees and venue shall be at the discretion of the Hon'ble Arbitrator.

In view of the aforementioned, impugned order is set aside. Revision petition in the aforementioned terms stands disposed of.

In order to seek consent, registry is directed to send a letter to Hon'ble Mr. Justice Kailash Gambhir, former Judge of the Delhi High Court.

(AMIT RAWAL)
JUDGE

May 05, 2016
savita