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

+ **CS(OS) 165/2015**

M/S HBR CHEMICALS PVT LTD

..... Plaintiff

Through: Mr. K.R.Chawla, Advocate

versus

M/S ANANT RAJ INDUSTRIES LTD

..... Defendant

Through: Mr.Sujoy Chatterjee, Advocate

CORAM:

HON'BLE MR. JUSTICE VIPIN SANGHI

ORDER

10.05.2016

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I.A. No. 6233/2015

This is an application filed by the defendant under Section 8 of the Arbitration and Conciliation Act, to seek the reference of the disputes raised by the plaintiff to arbitration in terms of the arbitration agreement contained in agreement executed between the parties. The submission of the defendant is that the application for provisional allotment of residential floors in DEL-37 situated at village Kapashera, New Delhi, made by the plaintiff to the defendant, which contains the contract between the parties, contains an arbitration clause in clause 48, which reads as follows:

“Clause 48 - All or any disputes arising out or touching upon or in relation to the terms of this application and/or standard Builder’s Buyer 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 New Delhi by a sole arbitrator appointed by the Company. The applicant(s)/intending Allottee(s) hereby confirms that he/she have or raise no objection to this appointment. The Delhi High Court at New Delhi and its subordinate courts alone shall have the jurisdiction in all matters arising out of /touching and/or concerning this application and/or Builder's Buyer's Agreement regardless of the place of execution of this application which is deemed to be at New Delhi."

Learned counsel for the applicant submits that the disputes between other buyers and the defendants are already in arbitration before an arbitral tribunal consisting of Hon'ble Mr. Justice S.N.Sapra(Retd.). Counsel for the defendant informs that there are about 15 cases pending before him.

The plaintiff has not disputed the position that there is an arbitration agreement between the parties governing the disputes raised in the present suit.

In view of the fact that the learned Arbitrator Mr. Justice S.N.Sapra(Retd.) is already dealing with 15 other cases, in which the defendant is one of the parties in arbitration, considering clauses 24 and 29 of the 5th Schedule to the Arbitration and Conciliation Act, 1996 as amended – which sets out the grounds which give rise to justifiable doubt as to the independent and impartiality of an Arbitrator, I am not inclined to refer the disputes arising in the present case to the same arbitral tribunal, as doing so

would render the arbitration open to challenge at a later stage.

In view of the aforesaid, the application is allowed. I appoint Shri Pradeep Chaddha, retired District Judge, as the sole Arbitrator to adjudicate the disputes between the parties. The Arbitral Tribunal shall conduct the arbitration with expedition. The fee of the arbitrator is fixed in terms of the fourth schedule of the Arbitration and Conciliation Act, as amended. The parties shall appear before the learned Arbitrator on 27.07.2016. The plaintiff shall file statement of claim with original documents before the Arbitrator on the said date.

Interim order dated 19.01.2015 shall continue to operate unless modified by the learned Arbitrator.

VIPIN SANGHI, J

MAY 10, 2016

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