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IN THE HIGH COURT OF DELHI AT NEW DELHI

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ARB.P. 194/2016

SHRI VIRENDER KUMAR JAIN

..... Petitioner

Through : Mr Shiv Charan Garg & Mr Imran
Khan, Advs.

versus

GRAND VENEZIA COMMERCIAL TOWERS

PRIVATE LIMITED & ANR.

..... Respondents

Through : Mr Raveesh Thukral, Adv

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER

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03.10.2016

1. The petitioner has filed the present petition under Section 11 (6) of the Arbitration and Conciliation Act, 1996 (hereafter 'the Act'), *inter alia*, praying that the Arbitrator be appointed for adjudication of the disputes between the parties in relation to the Memorandum of Understanding and letter of allotment, both dated 24.04.2010.
2. Admittedly, the said allotment letter contains an arbitration clause, which reads as under:-

“44.(a) The terms and conditions contained herein above shall be interpreted in a manner to be construed and enforced in accordance with the laws of India and conform to Public Policy and or Fair Trade Practices.

(b) All or any disputes arising out of or touching upon or in relation to the terms of this provisional Allotment Letter 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 & Conciliation Act, 1996 or any statutory amendments/ modifications thereof for the time being in force. The arbitrator shall be appointed by the Company. The arbitration proceedings shall be held at an appropriate location in Delhi/New Delhi. The Courts at Delhi alone shall have jurisdiction in all matters arising out of touching and/or in connection to this letter.”

3. In view of the disputes that are stated to have arisen, the petitioner had issued the notice dated 15.02.2016 invoking the arbitration clause.

4. The respondent had responded to the aforesaid notice by letter dated 08.03.2016 (sent by their Advocates), *inter alia*, informing the petitioner that in terms of the arbitration clause, respondent no.1 had appointed Mr Kumar Anurag Singh, Advocate as the sole arbitrator.

5. In terms of the arbitration clause, the parties had specifically agreed that the respondent would appoint the sole arbitrator, which admittedly has been done.

6. The learned counsel for the petitioner referred to the decision of the Supreme Court in **Denel (Proprietary) Limited vs. Ministry of Defence: (2012) 2 SCC 759** and drew the attention of this court to paragraph 21 of the said decision which reads as under:

“21. It is true that in normal circumstances while exercising jurisdiction under Section 11 (6), the Court would adhere to the terms of the

agreement as closely as possible. But, if the circumstances warrant, the Chief Justice or the nominee of the Chief Justice is not debarred from appointing any independent arbitrator other than the named arbitrator.”

7. On the strength of the aforesaid decision, the learned counsel for the petitioner contended that this Court should appoint an independent Arbitrator. He submitted that there was apprehension that the Arbitrator would be biased since he had been appointed by the respondent.

8. The learned counsel appearing on behalf of the respondent countered the aforesaid submissions and stated that the Arbitrator appointed is an independent one and necessary disclosure under Section 12 of the Act have also been made by the said Arbitrator. There is also no basis for the apprehension that the Arbitrator would be biased.

9. He relied upon the decision of the Supreme Court in **Indian Oil Corporation Limited & Ors vs. Raja Transport Private Limited: (2009) 8 SCC 520** and drew the attention of this Court to para No.48(v) which reads as under:-

“(v) Where the appointment procedure has been agreed between the parties, but the cause of action for invoking the jurisdiction of the Chief Justice or his designate under clauses (a), (b) or (c) of sub-section (6) has not arisen, then the question of Chief Justice or his designate exercising power under sub-section (6) does not arise. The

condition precedent for approaching the Chief Justice or his designate for taking necessary measures under sub-section (6) is that

- (i) a party failing to act as required under the agreed appointment procedure; or
- (ii) the parties (or the two appointed arbitrators), failing to reach an agreement expected of them under the agreed appointment procedure; or
- (iii) a person/institution who has been entrusted with any function under the agreed appointment procedure, failing to perform such function.”

10. Admittedly, the respondent had responded to the notice of arbitration and has appointed the Arbitrator in terms of the arbitration clause. In the circumstances, I am inclined to accept the contention that the present petition is not maintainable. There is also no material which would indicate that the Arbitrator so appointed would be biased or in any manner is disqualified to act as such. The parties must be held to their bargain and the petitioner had agreed that the Arbitrator would be appointed by the respondent. I see no reason as to why the petitioner should now be permitted to resile from the said agreement.

11. The decision in the case of *Denel (Proprietary) Limited* (*supra*) is not applicable to the present case. In that case, the Supreme Court came to the conclusion that the Arbitrator so appointed was an employee of the organisation and was thus, bound to accept the directions of the respondent therein (Union of India). It is in that context that the Court observed that an independent Arbitrator needs to be appointed.

12. In my view paragraph 21 of the said decision - which was relied upon by the petitioner - in fact supports the case of the respondent herein. It was observed therein that in the normal circumstances the Courts adhere to the terms of the agreement as closely as possible.

13. In the facts and circumstances of the case, I see no reason to depart from the arbitration clause, which was agreed to between the parties.

14. The petition is dismissed accordingly.

15. The parties are at liberty to approach the Arbitrator for fixing the schedule of hearing.

VIBHU BAKHRU, J

OCTOBER 03, 2016

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