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

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+ **ARB.P. 197/2016**

JCB INDIA LTD.

..... Petitioner

Through: Mr Rajiv Nayar, Sr. Adv. with Mr
Sudhir Sharma and Mr Sanjeev Kr.
Sharma, Advs.

versus

INDIA TECH LIMITED & ORS.

..... Respondent

Through: Mr J.P. Sengh, Sr. Adv. with Mr
Rohit Choudhary, Advs. for R1 and
R2
Mr Animesh Singh, Adv. for R3 and
R4

+ **O.M.P.(I) (COMM.) 97/2016**

JCB INDIA LTD

..... Petitioner

Through: Mr Rajiv Nayar, Sr. Adv. with Mr
Sudhir Sharma and Mr Sanjeev Kr.
Sharma, Advs.

versus

INDIA TECH LIMITED & ORS.

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Rohit Choudhary, Advs. for R1 and
R2
Mr Animesh Singh, Adv. for R3 and
R4

CORAM: JUSTICE S.MURALIDHAR

ORDER

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20.12.2016

ARB.P. 197/2016

1. The main issue raised by Mr J.P. Sengh, learned senior counsel appearing for Respondent Nos. 1 and 2 is that the Settlement Agreement dated 24th November, 2014 does not revive the arbitration clause in the main Dealer Agreement dated 1st February, 2008. In other words, it is contended that there is no incorporation by reference of the arbitration clause in the earlier Dealer Agreement in the subsequent Settlement Agreement, and, therefore, the Petitioner cannot seek to rely on the said arbitration clause to refer the disputes arising out of the Settlement Agreement.

2. On the other hand, Mr Rajiv Nayar, learned senior counsel for the Petitioner, contended that under Section 11(6A) of the Arbitration and Conciliation Act, 1996 ('Act'), as amended with effect from 23rd October, 2015, the Court should confine itself to the examination of the existence of an arbitration agreement. In any event, he submits that this question can be examined by the learned Arbitrator under Section 16 of the Act in case such an objection is raised by the Respondents before the Arbitral Tribunal.

3. Mr J.P. Sengh, learned senior counsel appearing for the Respondent Nos. 1 and 2 submits that Respondent Nos. 3 and 4 have wrongly been made parties to the present petition as they were not parties to the original Dealer Agreement and were only guarantors under the Settlement Agreement.

4. The issue whether the arbitration clause in the earlier agreement survives in the said agreement notwithstanding the Settlement Agreement and

whether Respondent Nos. 3 and 4 are to be made parties to the arbitration proceedings is to be decided by the Arbitral Tribunal in accordance with law.

5. Mr Rajiv Nayar, learned senior counsel for the Petitioners states that they have already nominated Justice J.D. Kapoor, a former Judge of this Court. Mr J.P. Sengh, learned senior counsel for Respondent Nos. 1 and 2 states that they will be writing to Justice A.K. Pattanaik (Mobile No. 011-26963011, 0880038113), a former Judge of the Supreme Court of India within a week to request him to be their nominee be their Arbitrator. Both the Arbitrators will within four weeks from today choose the third Arbitrator to complete the constitution of the Arbitral Tribunal. If there is any difficulty, the parties are at liberty to approach the Court.

6. The petition is disposed of accordingly.

O.M.P.(I) (COMM.) 97/2016

7. The interim order dated 30th March, 2016 is directed to continue till such time the Arbitral Tribunal to be constituted in terms of the above order in Arb. Petition No. 197/2016 vacates, modifies or varies it in an application by any of the parties under Section 17 of the Act.

8. The petition is disposed of.

S.MURALIDHAR, J

DECEMBER 20, 2016

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