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

+ **ARB.P. 203/2016**

RMC PROJECT CONSULTANTS LIMITED Petitioner
Through: Mr Aseem Mehrotra, Advocate.

versus

MEKASTER ECOSYSTEMS PRIVATE LIMITED
& ORS. Respondents
Through: Mr A. Kumar, Advocate for R-1.

CORAM:
HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER
% **15.09.2016**

1. The petitioner has filed the present petition under Section 11 of the Arbitration and Conciliation Act, 1996 *inter alia*, praying that an Arbitrator be appointed.
2. The petitioner states that respondent no.1 approached the petitioner and expressed its desire to appoint the petitioner as its consultant. In furtherance of negotiations, petitioner and respondent no.1 entered into an agreement captioned as “Confidentiality – Non Disclosure & Non Circumvention Agreement” on 11.06.2011. The petitioner further states that in pursuance of the said agreement respondent no. 1 gave an exclusive mandate/responsibility for arranging an investor for respondent no. 1 to the petitioner. Simultaneously, another agreement titled “Fee Protection Agreement” dated 11.06.2011 was also executed between the petitioner and

respondent no.1.

3. It is stated that certain disputes have arisen between the parties in respect of the said agreements which led the petitioner to issue legal notices dated 22.09.2014 and 06.10.2014.

4. Mr. Kumar, the learned counsel appearing for respondent no.1 points out that only the petitioner and respondent no. 1 are signatories/parties to the aforementioned agreements and the other respondents are not parties to the same. He further points out that insofar as the Fee Protection Agreement is concerned, there is no arbitration agreement. Further, it was also agreed that the Courts at Chandigarh shall have exclusive jurisdiction in respect of any dispute arising out of the Fee Protection Agreement. In so far as the Confidentiality – Non Disclosure & Non Circumvention Agreement is concerned, Mr Kumar contends that there are no disputes between the parties in respect of that agreement and therefore, there is no requirement to appoint an arbitrator.

5. The aforesaid contentions are countered by the learned counsel for the petitioner who submits that there are serious disputes between the parties in relation to the Confidentiality – Non Disclosure & Non Circumvention Agreement, which admittedly contains an arbitration clause.

6. I have heard the learned counsel for the parties.

7. There is no dispute that the parties had executed the Confidentiality – Non Disclosure & Non Circumvention Agreement which contains an arbitration clause that reads as under:-

“8. Law and Jurisdiction

Any claim, controversy or dispute arising out of or under this Agreement, not settled by mutual agreement of the parties within 30 days after a party is providing written notice for settlement thereof, shall be referred to arbitration to a sole arbitrator jointly appointed by the parties under the relevant Arbitration and Conciliation Act. In the event the Parties are unable to agree upon a sole arbitrator, the claim, controversy or dispute shall be referred to a panel of three arbitrators, one of whom shall be appointed by each party and a third by the aforesaid two arbitrators. The venue of arbitration proceedings shall be Delhi (India). The language of the arbitration shall be English.”

8. At this stage, the Court is not concerned with the merits of the disputes that have arisen between the parties. However, it is clear that any dispute arising out of or under the Confidentiality – Non Disclosure & Non Circumvention Agreement, which is not settled by the parties by mutual agreement is to be referred to an Arbitral Tribunal of three Arbitrators. It is also seen that the venue of the arbitration proceedings is Delhi and, therefore, this Court would indisputably have the jurisdiction to entertain the present petition (see ***Bharat Aluminium Company v. Kaiser Aluminium Technical Services Inc.***: 2012 (9) SCC 552).

9. At this stage, the learned counsel for the petitioner as well as respondent no.1 state that instead of appointing an Arbitral Tribunal of three Arbitrators, a Sole Arbitrator may be appointed for adjudicating any claim/controversy or dispute arising out of or under the Confidentiality – Non Disclosure & Non Circumvention Agreement.

10. Accordingly, it is directed that an Arbitrator be appointed under the

Rules of the Delhi International Arbitration Centre (DIAC). The representatives of the parties shall appear before the co-ordinator, DIAC on 22.09.2016 at 11:00 a.m. The arbitration shall be conducted under the aegis of DIAC and in accordance with its Rules.

11. The petition is disposed of.

SEPTEMBER 15, 2016
MK

VIBHU BAKHRU, J