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IN THE HIGH COURT OF DELHI AT NEW DELHI

ARB.P. 257/2016

RAJDARBAR PAN MASALA PVT LTD

..... Petitioner

Through : Mr Ashok Aggarwal, Ms Yamini
Khurana, Mr Subham Agarwal and
Mr Shwetank Tripathi, Advs.

versus

SHRI KUNJ BIHARI SAHKARI AWAS SAMITI LIMITED

..... Respondent

Through : Mr Simran Jyot Singh, Adv

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER

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23.08.2016

ARB.P. 257/2016

1. This is a Petition filed under Section 11 of the Arbitration and Conciliation Act, 1996 (hereafter 'the Act'), *inter alia*, praying that an arbitrator be appointed for resolution of the disputes which have arisen between the Petitioner and the Respondent.

2. It is stated that the Petitioner (then known as M/s Fortune Buildwell Private Limited) had entered into a collaboration agreement with the Respondent and eight other parties on 04.09.2004. It is not disputed that the aforesaid collaboration agreement included an arbitration clause which reads as under:-

“21. Disputes and Resolution

1) If any controversy or dispute should arise between the parties in the performance interpretation implementation and application of the agreement, either party may serve upon the

other a written notice stating that such party desires to have the controversy or dispute resolved by any arbitration. If the parties cannot agree within fifteen (15) days from the serving of such notice to the other party, failing to appoint an arbitrator with mutual consent, each party shall appoint one arbitrator and such appointed arbitrator shall appoint one Umpire. All the three arbitrators shall arbitrate the referred dispute in terms of this agreement and in accordance with the provisions of the Indian Arbitration Act. The decision and award of arbitrator (s) shall be final, and binding, upon both the parties.

2) The arbitrators shall also determine whether and when termination is to become effective.

3) The seat of arbitration will be Delhi.”

3. The Petitioner has already invoked the aforementioned arbitration clause against M/s Kasturi Sakhari Awas Samiti Limited and Justice Aftab Alam, former Judge of the Supreme Court has been appointed as an arbitrator for adjudication of the disputes arising out of the collaboration agreement between the Petitioner and M/s Kasturi Sahkari Awas Samiti Limited. The said arbitration proceedings are pending.

4. The learned counsel for the Respondent submits that in addition to the Respondent and M/s Kasturi Sahakari Awas Samiti, other parties to the collaboration agreement should also be made parties to the arbitration proceedings initiated by the Petitioner.

5. The aforenoted contention is countered by the learned counsel

for the Petitioner, who submits that the other parties have already been merged with the Petitioner, and, therefore, the Petitioner has no grievance against the said parties.

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

7. Since it is not disputed that the arbitration agreement exists between the Petitioner and the Respondent and that the disputes have arisen between the parties, it is necessary that an arbitrator be appointed.

8. The learned counsel for the Respondent is also agreeable that instead of an Arbitral Tribunal of three arbitrators as envisaged in the arbitration clause, Justice Aftab Alam be appointed as a sole arbitrator to also adjudicate the disputes between the Petitioner and the Respondent in relation to the collaboration agreement.

9. In view of the above, Justice Aftab Alam, former Judge of the Supreme Court is hereby appointed as an arbitrator for adjudicating the disputes between the Petitioner and the Respondent. The fees of the arbitrator shall be fixed in accordance with the Schedule IV of the Act.

10. The parties shall approach the office of the arbitrator within a period of two weeks from today for fixing a convenient date for preliminary hearing.

11. The petition is disposed of.

IA Nos.9067 and 10167 of 2016

12. These applications have been filed by the Respondent whereas IA No.9067/2016 is for impleadment of the parties, IA No.10167/2016 is for withdrawal of former application.

13. IA No.10167/2016 is allowed. Consequently IA No.9067/2016 is dismissed as withdrawn.

VIBHU BAKHRU, J

AUGUST 23, 2016

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