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

+ **ARB.P. 262/2016 & IA Nos. 5350-5351/2016**

UDAY GUPTA Petitioner
Through : Mr S.P. Singh Chawla, Advocate.

versus

EMAAR MGF LAND LIMITED Respondent
Through : Ms Manmeet Arora, Advocate.

CORAM:
HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER
% **04.10.2016**

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 adjudicating the disputes that have arisen between the parties in relation to the "Office/Retail/Restaurant Space Buyer's Agreement" whereby respondent has agreed to sell the Unit No. 412A in the complex known as "The Palm Square" which was being developed by the respondent.

2. The said agreement contains an arbitration clause, which reads as under:-

"35. ARBITRATION

All or any dispute arising out of or touching upon or in relation to the terms of this Agreement or its termination, including the interpretation and validity 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 or re-enactment thereof for the time being in force. A sole Arbitrator shall be nominated by the any one of the Directors of the Company, who shall hold the arbitration proceedings at the registered office of the Company in at New Delhi or at any other place as may be decided by such Arbitrator. The Allottee(s) hereby confirms that he shall have no objection to such appointment even if the person so appointed, as the Arbitrator, is an employee or advocate of the Company or is otherwise connected with the Company and the Allottee(s) confirms that notwithstanding such relationship / connection and the holding of hearings at the registered office of the Company in New Delhi, the Allottee(s) shall have no doubts as to the. independence or impartiality of the said Arbitrator and shall not challenge the same.)"

3. In view of the disputes, the petitioner issued a notice dated 21.12.2015 invoking the arbitration and the respondent, accordingly, appointed one Mr Anurag Chawla , Advocate as an Arbitrator. The petitioner claims that the appointment was not regular and he accordingly filed the present petition seeking appointment of an arbitrator. In the meantime, Mr Anurag Chawla, recused form the matter due to the objections taken by the petitioner and the Director of the respondent has now appointed Mr Krishnendu Dutta, Advocate as the sole Arbitrator to adjudicate the disputes. The Principal contention advanced by the petitioner is that the first appointment was irregular in as much as, according to the petitioner, the company had no right to appoint the Arbitrator; the arbitrator was required to be appointed by the Directors of the respondent company. It is contended that consequently, the right of the Director(s) of the respondent company to appoint the

arbitrator stands forfeited. This is disputed by the learned counsel for the respondent who states that the clause clearly indicates that the Arbitrator was to be nominated by any one of the Directors of the company for and on behalf of the respondent company

4. I am not inclined to examine the rival contentions because an arbitrator has already been appointed and there is no objection for his acting as such. There is no allegation as to any likelihood of bias of the said arbitrator and the petitioner also confirms that it has full confidence in the arbitrator as appointed.

5. At this stage, the learned counsel for the petitioner states that he would be satisfied if the arbitration is directed to be conducted under the aegis of the Delhi International Arbitration Centre (DIAC). The learned counsel appearing for the respondent concurs with the aforesaid suggestion.

6. Accordingly, it is directed that the representatives of the parties shall appear before the Co-ordinator, DIAC on 26.10.2016 at 11:00 AM. The arbitration shall be conducted under the aegis of DIAC and in accordance with its Rules.

7. The petition is disposed of.

VIBHU BAKHRU, J

OCTOBER 04, 2016

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