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IN THE HIGH COURT OF DELHI AT NEW DELHI

O.M.P.(T) 9/2016

HARVINDER KAUR CHHABRA Petitioner
Through: Mr. Ashok Chhabra with Mr. Nikhil
Karwal, Advocates.

Versus

JAGDISH NARAIN KAPOOR Respondent
Through: Mr. Moni Cinmoy, Advocate.

CORAM: JUSTICE S.MURALIDHAR

ORDER

11.11.2016

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1. The objection raised by the Respondent to the appointment of an another Arbitrator to replace the earlier Arbitrator who has resigned is two-fold. In the first instance it is stated that the following clauses in the agreement between the parties do not constitute an arbitration clause:

“12. That in case any of the parties hereto infringes any of the terms and conditions of this agreement then the other party shall be entitled to get this transaction enforced through the Court of law, at the cost and expenses of the defaulting party.

15. That both the parties will abide by the terms and conditions of this agreement and annexure strictly and in case of any misunderstanding both parties will accept the decision given by Mr. Bhupinder Singh (Manni) s/o Shri Hardial Singh r/o G-Model Town, Delhi – 9 who has been appointed as Arbitrator by both the parties.”

2. Referring to the decision of the Supreme Court in *Karnataka Power*

Transmission Corporation Limited v. Deepak Cables (India) Limited (2014) 11 SCC 148 it is contended by the counsel for the Respondent that the disputes for adjudication to the Court and not before the learned Arbitrator.

3. This Court is unable to accept the above submission. In the first place it is seen that the relevant clause which was considered by the Supreme Court in the aforementioned decision is different from the clause that has been extracted hereinabove. In the said case before the Supreme Court the clause did not mention reference of any dispute to arbitration and simply stated that the dispute would be decided in the first instance by the Competent Authority. As far as the present case is concerned, not only have the parties named the Arbitrator but in fact appeared before him.

4. The second objection is that the Petitioner did not sign the agreement but one Mr. S.P. Singh had signed it. The Court finds that S.P. Singh has taken the trouble of writing in bracket 'on behalf of Harvinder Kaur Chhabra'. Secondly, it is also seen that the Respondent did appear before the named Arbitrator, i.e., Mr. Bhupinder Singh and sought copy of the complete claim petition. It is another thing that Mr. Bhupinder Singh chose to resign on the ground of lack of cooperation of the Respondent. The fact, however, remains that before the learned Arbitrator no objection was raised by the Respondent that he has no jurisdiction. Nevertheless the Court is of the view that in the event that the Respondent wishes to contest the validity of the agreement, the Respondent can avail the remedy under Section 16 of the Arbitration and Conciliation Act, 1996.

5. As far as the present petition is concerned, the Court is satisfied that there is an arbitration clause in the agreement. The Court, accordingly, proposes Dr. T.R. Naval, retired Additional District Judge, Delhi (Mobile No. 9910384662), residing at II G-603, Pearl Court, Ram Prastha Greens, Vaishali, Ghaziabad as sole Arbitrator to adjudicate the disputes between the parties including their claims and counter-claims. The arbitration shall take place under the aegis of the Delhi International Arbitration Centre ('DAC'). The fees of the learned Arbitrator will be in terms of the Delhi High Court Arbitration Centre (Arbitrators' Fees) Rules. In the first instance, the proposed Arbitrator will make a disclosure to the DAC in terms of Section 11 (8) read with Section 12 (1) of the Act and, thereafter, enter upon reference. DAC will provide to the parties copies of the said disclosure. In the event the disclosure is not made within a reasonable time or such disclosure discloses the inability of the proposed Arbitrator to act as such, it will be open to the parties to apply to this Court for directions.

6. The Petitioner will collect the arbitral record from the earlier learned Arbitrator and deposit it with the Additional Coordinator, DAC within two weeks from today.

7. The petition and the applications are disposed of. A copy of this order be communicated to the learned Arbitrator as well as Additional Coordinator, DAC forthwith.

S.MURALIDHAR, J

NOVEMBER 11, 2016/Rm