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

+ **ARB.P. 440/2016**

SANJEEV ANAND

..... Petitioner

Through: Mr Saurabh Kausal, Advocate.

versus

MS ALPANA AGGARWAL & ORS.

..... Respondents

Through: Mr Himanshu Ahuja and Ms Dipti,
Advocates.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER

% **05.10.2016**

1. The petitioner has filed the present petition under Section 11 of the Arbitration and Conciliation Act, 1996 (hereafter 'the Act') praying that an Arbitrator be appointed to adjudicate the disputes that have arisen between the parties in relation to the agreement dated 01.10.2011.

2. The aforesaid petition was heard on 05.09.2016 where it was noted that the respondents did not dispute the existence of the agreement dated 01.10.2011 or the Dispute Resolution clause. The only objection taken on the said date was that the petitioner had already filed an application before the Company Court in proceedings which are pending against M/s Laxmi Vatika Ltd. (Court in CA No.1334/2014 in Co. Pet. 28/2013). The said proceedings were instituted by a creditor for winding up that company.

3. After hearing the parties and after taking note of the fact that the

arbitration agreement existed between the parties, the learned counsel for the parties were given an opportunity to explore the possibility of jointly agreeing for appointment of an Arbitrator. This was particularly, in view of the contention advanced by the respondents - although disputed by the petitioner - that the notice dated 14.07.2016 invoking the arbitration clause was received by the respondents on 23.08.2016 and, therefore, the period of 30 days had not elapsed.

4. The learned counsel for the respondents states today that the petition ought to be dismissed because another petition under Section 9 of the Act preferred by the petitioner has been rejected on the ground that winding up petition in respect of the company in question— M/s Laxmi Vatika Ltd. - is pending before the Company Court.

5. Proceedings under Section 9 of the Act are for interim measures and rejection of petitioner's prayer for interim relief does not negate his right to have the disputes adjudicated by an Arbitrator. However, it is apparent from the contentions advanced by the respondents that the parties have not been able to amicably resolve the disputes or agree to appointment of an Arbitrator.

6. It is not disputed that the petitioner and respondents entered into a Share Transfer and Profit and Loss Agreement dated 01.10.2011, wherein the respondents had, inter alia, agreed to transfer majority shareholding in Lakshmi Vatika Limited to the petitioner. The said agreement contained an arbitration clause which is set out below:

“7. Every dispute, difference, or question, which may, at any time, arise between the parties hereto, in respect of any clause of the Agreement, shall be referred to the courts of law or arbitrator who shall be appointed by the mutual consent of both the parties. The arbitration proceedings shall be conducted as per Arbitration and Conciliation Act, 1996 or any amendment made thereto. The place of Arbitration shall be at Delhi or Dehradun or Jaipur or other place where the office or the branch office or sub-office of the both the parties are situated and the proceedings shall be held in English language. The award of the Arbitrator shall be final and binding on the parties. Each party shall be responsible for its own cost; in participating in the dispute resolution process.”

7. In the circumstances, it would be necessary that an Arbitrator be appointed for adjudicating the disputes between the parties. 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 03.11.2016 at 11:00 AM. The arbitration shall be conducted under the aegis of DIAC and in accordance with its Rules.

8. The petition is disposed of.

VIBHU BAKHRU, J

OCTOBER 05, 2016
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