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

+ **ARB.P. 477/2016**

CADILLAC INFOTECH PRIVATE LTD Petitioner
Through: Mr Rohit K. Aggarwal, Advocate.

versus

AIRWIL JKM INFRACON PVT LTD Respondent
Through: Ms Gurkamal Hora Arora, Advocate.

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 ('the Act') praying that the Arbitral Tribunal be constituted for adjudication of the disputes that are stated to have arisen in respect of the Property Development Agreement executed by the parties on 06.09.2014.
2. The said agreement contains an arbitration clause, which reads as under:-

12. GOVERNING LAW AND DISPUTE RESOLUTION

12.1 The Development Agreement shall be governed by, and construed in accordance with, laws of India.

12.2 In the case of any dispute, controversy or claim arising out of or in connection with this Development Agreement, including any question regarding its existence, validity, interpretation, breach or termination, between any of the Parties such Parties shall attempt to first resolve such dispute

or claim through discussions between senior executives or representatives of the disputing Parties.

12.3 If the dispute is not resolved through such discussions within 30 (Thirty) days after one disputing Party has served a written notice on the other disputing Party requesting the commencement of discussions, such dispute shall be finally settled through arbitration in accordance with the Arbitration and Conciliation Act, 1996 as in force on the date hereof or any subsequent amendment thereof.

12.4 The venue of arbitration shall be at New Delhi and the language of the arbitration proceedings shall be English.

12.5 The arbitral tribunal shall consist of three (3) arbitrators, wherein one arbitrator to be appointed by each Party - and each arbitrator so appointed shall appoint the third arbitrator who shall preside over the arbitral tribunal.

12.6 Each disputing Party shall co-operate in good faith to expedite the conduct of any arbitral proceedings commenced under this Development Agreement.

12.7 The Parties shall be responsible to bear their respective costs and expenses in relation to any such arbitration proceeding and any cost with respect to setting up of such arbitral tribunal.

12.8 While any dispute is pending, the disputing Parties shall continue to perform such of their obligations under this Development Agreement as do not relate to the subject matter of the dispute, without prejudice to the final determination of the dispute.

12.9 Any decision of the sole arbitrator/arbitral tribunal shall be final and binding on the Parties.

12.10 The courts at New Delhi shall have the jurisdiction in case of failure of arbitration for any reason or for non-agreement over selection of arbitrator.”

3. Mr Arora, the learned counsel appearing for the respondent submits that the present petition is premature inasmuch as no written notice was served by the petitioner requesting the commencement of discussions for resolution of the disputes and therefore, the present petition is premature.

4. Mr. Aggarwal, learned counsel appearing for the petitioner states that several notices were sent and the respondent even assured that the matter would be resolved, the disputes could not be resolved. He contended, that in the circumstances, the petitioner had exhausted all its remedies for an amicable resolution of the disputes.

5. He, nonetheless, does not dispute that a written notice requesting the commencement of discussion was not issued/served by the petitioner. He, accordingly, seeks to withdraw the present petition with liberty to approach afresh after serving a written notice as referred to Article 12 of the agreement and after making a further effort for an amicable resolution of disputes.

6. Dismissed as withdrawn with the aforesaid liberty.

VIBHU BAKHRU, J

SEPTEMBER 15, 2016
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