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IN THE HIGH COURT OF DELHI AT NEW DELHI

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ARB.P. 566/2016

RAJIV KHANNA

..... Petitioner

Through: Mr. Siddharth Yadav, Advocate.

versus

EARTH BUILDPROP PVT. LTD

..... Respondent

Through: Mr. Anshul Mittal with Mr. Sushant
Bali, Advocates.

CORAM: JUSTICE S.MURALIDHAR

ORDER

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25.10.2016

1. This is a petition filed by the Petitioner, Rajiv Khanna, under Section 11 of the Arbitration and Conciliation Act, 1996 (Act) against the Respondent, Earth Buildprop Private Limited, seeking the appointment of an Umpire between the parties and a second arbitrator.

2. The Respondent is stated to have issued notice dated 18th November 2015 under Section 11 of the Act appointing one Mr. Bhanu Kathpalia as sole arbitrator. However, this was not in terms of the arbitration clause in the Booking Application Form signed by the Petitioner but in terms of a clause in the Flat Buyers' Agreement which was not signed by the Petitioner. The Petitioner then appointed one Mr Saurabh Prakash, Advocate as his Arbitrator. Mr Prakash kept writing to Mr Kathpalia for the appointment of an umpire but no meeting took place. Thereafter, the present petition was

filed.

3. Clause 63 of the Booking Application Form signed by the Petitioner accepting the conditions therein envisages one Mr. Vinod Varshney and in the event of his non-availability Mr. P.D. Mittal acting as a sole arbitrator. Since neither of them was appointed as an arbitrator by the Respondent, the Petitioner sent a reply refusing to accept the above appointment.

4. Having heard counsel for the parties, the Court is of the view that the Petitioner was justified in declining to accept the appointment of Mr Kathpalia as Arbitrator as it was not in accordance with the clause in the Booking Application Form. There is, therefore, a failure by the Respondent to act in accordance with the arbitration clause between the parties. The counsel for the parties are agreeable that a sole Arbitrator can be appointed by the Court to adjudicate their disputes.

5. The Court, accordingly, proposes that Mr. N.P. Sahni, Advocate (Mobile No. 9350859807) be appointed 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'). 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. Subject to compliance with the above direction, Mr. Sahni will act as Arbitrator and enter upon reference. The fees of the learned Arbitrator will be in terms of the Delhi High Court Arbitration Centre (Arbitrators' Fees) Rules.

7. The petition is disposed of. A copy of this order be communicated to Mr.N. P. Sahni as well as Additional Coordinator, DAC forthwith.

S. MURALIDHAR, J

OCTOBER 25, 2016

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