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

+ O.M.P. (T) (COMM.) 65/2016 & IA No.12773/2016

JAIWANT DAULAT SINGH & ORS. Petitioners

Through: Mr Jeevesh Nagrath, Mr Amitabh
Chaturvedi and Ms Riva, Advocates.

versus

EMAAR MGF LAND LIMITED Respondent

Through: Ms Manmeet Arora and Mr Tarang
Gupta, Advocates.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER

% **09.11.2016**

1. The petitioner has filed the present petition under Section 14 of the Arbitration and Conciliation Act, 1996 (hereafter the 'Act'), *inter alia*, praying as under:

“(a) Terminate the mandate of the Sole Arbitrator Sh. Rajiv Bansal, Advocate, who has allegedly been appointed by the Respondent company as the sole arbitrator vide its letter dated 06.08.2015, on the ground that he has become both de jure and de facto unable to perform his functions and substitute him with any other independent, impartial and unbiased arbitrator as may be appointed by this Hon'ble Court; and,”

2. It is the case of the petitioner that it has a reasonable apprehension and belief that the arbitration proceedings could not be conducted fairly as the Sole Arbitrator was the standing counsel for DDA and the DDA and

Emaar MGF Land Ltd. have contested legal proceedings in relation to the controversy involved with respect to the Commonwealth Games Village Complex where their interest was common.

3. Mr Nagrath, the learned counsel appearing for the petitioner submitted that there was a close interaction between the Arbitrator and officers of the respondent and this gives rise to a reasonable apprehension of bias.

4. Ms Arora, the learned counsel appearing for the respondent stoutly disputes the contentions advanced by the petitioner. She further pointed out that the petitioner had also filed letters before the Arbitrator expressing doubt as to his impartiality and requesting him not to proceed further in the matter. The Arbitrator had considered and rejected the aforesaid request.

5. I have heard the counsel for the parties.

6. Without going into the merits of the allegations made, it is clear that the principal ground on which the present petition has been filed is that the petitioner has an apprehension that the Arbitrator is biased.

7. Under the scheme of the Act, a party to an arbitration is at liberty to challenge the appointment of an Arbitrator; however, in terms of Section 13(4) of the Act, if the said challenge is not successful, the Arbitral Tribunal is to continue with the arbitral proceedings and make an arbitral award. And, in terms of Section 13(5) of the Act, it would be open for the party challenging the Arbitrator to make an application for setting aside the Award. However, there is no provision which entitles a party to apply to the

Court for removal of the Arbitrator on the grounds of likelihood of bias or existence of circumstances which give rise to a justifiable doubt as to the independence and impartiality of the Arbitrator. The mandate of Section 5 of the Act is clear that no judicial authority shall intervene except as expressly provided. In the present case, Section 13 expressly provides for the remedy available to the party challenging the independence of the Arbitrator and that is the only remedy available to that party. Under the scheme of the Act, recourse to Section 14 is clearly not available on the grounds specified under Section 12 of the Act for challenging the arbitrator. This is also the view expressed by the Division Bench of this Court in **Progressive Career Academy Pvt. Ltd. v. FIIT JEE Ltd.:** 180 (2011) DLT 714 wherein it has been held that the petition under Section 14 of the Act cannot be entertained on the ground of reasonable apprehension of bias.

8. Accordingly, the present petition is dismissed.

VIBHU BAKHRU, J

NOVEMBER 09, 2016
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