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IN THE HIGH COURT OF DELHI AT NEW DELHI

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ARB.P. 602/2016

SAI SWASTIK BUILDCON PVT. LTD

..... Petitioner

Through : Ms Cheena Sharma & Mr Yogesh
Choudhary, Advs.

versus

MEDHA HOUSING PVT.LTD

..... Respondent

Through : Mr Puneet Mittal & Mr Sagar Mittal,
Advs.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER

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21.10.2016

1. The petitioner has filed the petition under Section 11 of the Arbitration and Conciliation Act, 1996 (hereafter 'the Act'), *inter alia*, praying that an Arbitrator be appointed.

2. The petitioner asserts that certain disputes have arisen between the parties in relation to an agreement dated 20.11.2012 for construction of 56 flats. It is stated that in view of the disputes, the petitioner had sent legal notice dated 25.08.2014 invoking the arbitration clause and for appointment of the Arbitrator. However, the respondent did not agree for appointment of the Arbitrator, as proposed by the petitioner.

3. The Agreement dated 20.11.2012 contains the arbitration clause, which is set out below:-

“Any dispute/ controversy/ claim or
difference of any kind arising between the

parties in connection with the present agreement will be resolved amicably by mutual discussion and negotiations failing which the same shall be referred to a sole arbitrator to be appointed by mutual consent by both the parties. The arbitration proceedings shall take place at Delhi as per the Arbitration and Conciliation Act and both the parties shall jointly foot the expenses of the said proceedings.”

4. The learned counsel for the respondent does not dispute the existence of the agreement 20.11.2012 or the arbitration clause. He, however, submits that the claims made by the petitioner would be barred by limitation. He further submits that the petitioner has not approached this Court with clean hands in as much as it has suppressed the fact that the petitioner filed a petition under Section 9 of the Act, *inter alia*, undertaking to withdraw an earlier petition under Section 9 of the Act filed before the Court of learned Additional District Judge, Patiala House Courts, New Delhi. However, the petitioner has not withdrawn the said petition and has also failed to mention the filing of the aforesaid petitions in this petition.

5. I have heard the learned counsels for the parties.

6. At this stage, it is not necessary for this Court to examine the controversy between the parties. The learned counsel for the respondent may be correct in his submissions that the petitioner has not approached this Court with clean hands. However, that will not disentitle the petitioner for seeking appointment of an Arbitrator for

adjudication of the disputes.

7. In the circumstances, with the consent of parties, 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 17.11.2016 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 21, 2016

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