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IN THE HIGH COURT OF DELHI AT NEW DELHI

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ARB.P. 416/2015

I.A. HOUSING PVT. LTD

..... Petitioner

Through: Mr. Ankur Chhibber, Advocate.

versus

RSL DEVELOPERS PVT. LTD. & ORS

..... Respondents

Through: Mr. Abhishek Paruthi, Advocate.

CORAM: JUSTICE S.MURALIDHAR

ORDER

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04.11.2016

1. The mediation was not successful.
2. The present petition under Section 11 (6) of the Arbitration and Conciliation Act, 1996 ('Act') seeks the appointment of an Arbitrator to adjudicate the disputes between the parties arising out of the Memorandum of Understanding ('MoU') dated 14th October, 2011.
3. This petition has been pending since July 2015. Learned counsel for the Respondents sought an adjournment on the ground that he has misplaced his file. It is seen that the matter has been adjourned several times. There was sufficient time for the Respondents to obtain a soft copy of the petition from the Court Master. They need not have waited till today. In any event, the Court has perused the reply filed by the Respondents.
4. From the reply, it is seen that the first objection is regarding there being no resolution of the Board of Directors ('BoD') of the Petitioner company authorising the filing of the present petition. Learned counsel

for the Petitioner draws the attention of the Court to the Board Resolution dated 13th July, 2015 a copy of which has been included in the documents. It has authorized Mr. Mahender Kumar Bhatla, Managing Director of the Petitioner, to sign and execute the documents pertaining to the legal cases on behalf of the company.

5. The second objection in the reply is that the original MoU is not filed. Learned counsel for the Petitioner points out that the original of the MoU has been filed with a criminal complaint filed by the Petitioner against the Respondents under Section 138 of the Negotiable Instruments Act. He produces a photocopy of the said original MoU containing the arbitration clause. It is seen that the Respondents do not dispute that the said MoU has in fact been entered into between the parties and that it contains an arbitration clause. Consequently, there is no merit in this objection.

6. The third objection is that the Court lacks territorial jurisdiction to entertain the present petition. It is seen that both the parties are located in Delhi. Further, para 36 of the MoU states that the MoU is “subject to exclusive jurisdiction of the Court at New Delhi in case of any dispute arising because of malfeasance of either party or any other reason”. Consequently, there is no merit in the above objection too.

7. It is pointed out by learned counsel for the Petitioner that in reply to the legal notice issued by the Petitioner, it is sought to be contended by the Respondents that the Petitioner’s claims are time barred. It is however pointed out by the counsel for the Petitioner that the invocation of the arbitration clause by the Petitioner by sending the legal notice dated 27th April, 2015 was well within the limitation period. Further, considering the letter dated 30th July, 2013 written by the Respondent to the Petitioner seeking to replace the cheques earlier issued with fresh cheques, it cannot

be said that the claim is time barred.

8. In any event, the question of limitation can be examined in the arbitral proceedings in accordance with law if raised by the Respondents.

9. This Court, accordingly, appoints Mr. Pradeep Chaddah, a former District and Sessions Judge (Mobile No. 9910384665), as an 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'). The fees of the learned Arbitrator will be in terms of the Delhi High Court Arbitration Centre (Arbitrators' Fees) Rules.

10. The petition and the applications are disposed of. A copy of this order be communicated to the learned Arbitrator as well as Additional Coordinator, DAC forthwith.

S.MURALIDHAR, J

NOVEMBER 04, 2016

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