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IN THE HIGH COURT OF DELHI AT NEW DELHI

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ARB.P. 477/2015 & IA 4947/2016

PROMA INDUSTRIES LTD.

..... Petitioner

Through: Mr. Gurpreet Singh, Advocate.

versus

GIRNAR FIBERS LTD.

..... Respondent

Through: Mr. Asheesh Jain, Advocate.

CORAM: JUSTICE S.MURALIDHAR

ORDER

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26.10.2016

1. One of the preliminary objection raised by the Respondent to the maintainability of the present petition under Section 11 of the Act seeking appointment of an Arbitrator to adjudicate the dispute between the parties arising out of the agreement to sell dated 11th January, 2009 is that the said agreement was not registered and was inadequately stamped and, therefore, cannot be acted upon. Reliance is placed on the decision of the Supreme Court in *SMS Tea Estates Pvt. Ltd. v. Chandmari Tea Company Pvt. Ltd.* **2011(4) ARB LR 265 (SC)**, which was subsequently followed by this Court in *Avantha Holding Ltd. v. Osian's Connoisseurs of ART (P) Ltd. & Anr.*
2. Learned counsel for the Respondent also draws attention of the Court to the fact that there was an order passed by the collector of Stamps on 2nd July, 2010 determining the stamp duty payable on the document as Rs. 1,16,32,400 as well as penalty of Rs. 50,000.

3. Learned counsel for the Petitioner points out that the said determination by the Collector of Stamps is erroneous and the Petitioner has challenged the said order in a writ petition in the High Court of Madhya Pradesh and the said petition is pending. There is no stay of the order passed by the Collector of Stamps.

4. The question of the Court acting on the agreement to sell and appointing an Arbitrator cannot arise till such time the challenge by the Petitioner to the order passed by the Collector of Stamps dated 2nd July, 2010 is not disposed of. In case the Petitioner succeeds in appeal and that order of the High Court of Madhya Pradesh becomes final, then it would be possible for the Petitioner to approach this Court for appropriate relief regarding appointment of Arbitrator. If the decision is against the Petitioner and becomes final, then it is only after the compliance order of the Collector of Stamps that the Petitioner can seek appointment of an Arbitrator.

5. With the above observations, the petition is disposed of.

S.MURALIDHAR, J

OCTOBER 26, 2016

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