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

+ **ARB.P. 532/2015**

VIJAY KUMAR DUA Petitioner

Through: Mr. Dinesh Agnani, Sr. Advocate
with Mr. Harpreet Singh and Mr.
Rajesh Gupta, Advocate

versus

RAKESH SHARMA & ORS. Respondents

Through: Mr. Sanjay Bhatt with Mr. Abhishek
Dhami, Advocate for respondent no.
3/AXIS Bank Ltd.

CORAM: JUSTICE S.MURALIDHAR

ORDER

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08.12.2016

1. This is a petition under Section 11(6) of the Arbitration and Conciliation Act, 1996 ('Act') seeking the appointment of an arbitrator on behalf of Respondent No. 3 to adjudicate the disputes between the parties arising out of the multi party agreement dated 26th December 2014.

2. It is not in dispute that there is an arbitration clause in the said multi party agreement dated 26th December, 2014. There are four parties to the said multi party agreement. The Petitioner is described as a buyer/third party. The other three parties are the borrower (the First Party), Mr. Rakesh and Mr. Anil Sharma who are the owners of the property bearing no. 90/72, Malviya Nagar, New Delhi (the Second Party) and the AXIS Bank Limited (the Fourth party).

3. Clause 16 which is the Arbitration Clause reads as under :-

“16. In the event of any dispute of difference arising out of or relating to or with reference to or in connection with this quadripartite agreement, including termination of this agreement, the same shall be referred to a panel of arbitrators, one to be nominated by each of the parties and fifth to be appointed jointly by the two arbitrators so nominated, whose decision shall be final and binding on all the parties hereto. The arbitrators shall give a reasoned award. The venue of the arbitration shall be at New Delhi and the arbitration proceedings shall be in accordance with the Indian Arbitration and Conciliation Act, 1996. In the event, the parties fail to accept upon the name of the a sole arbitrator within 30 days of making a request, then either party may approach the Chief Justice of Delhi High Court at New Delhi or his designated justices for appointment of arbitrator.”

4. The parties agree that there is an typographical error in the arbitration clause inasmuch as the fifth arbitrator should be appointed by the four arbitrators nominated one each by the parties and not ‘two’ arbitrators.

5. The Petitioner issued a legal notice dated 2nd June, 2015 raising a claim of specific performance of the agreement to sell qua the property in question as well as questioning the forfeiture of Rs. 25 lacs paid by it under the said agreement for the alleged failure to pay the balance sum. In response thereto Respondent Nos. 1, 2 and 4 have nominated their respective arbitrators, whereas Respondent No.3, AXIS Bank Limited has not. Even today, the opposition to the appointment of the fifth arbitrator is only by AXIS Bank Limited.

6. Learned counsel appearing for the AXIS Bank Limited submitted that this was a collusive proceeding brought forth by the Petitioner, with the support

of Respondent Nos. 1,2 and 4 and that in any event, the claim of the Petitioner was totally untenable. It is further submitted that as regards two other properties of the borrowers, proceedings have been instituted by the Bank against them before the Debt Recovery Tribunal (DRT). It is, however, not disputed by the learned counsel for the AXIS Bank Limited that the Petitioner is not a party to the proceedings in the DRT. It is also not in dispute that the arbitration clause survives the agreement between the parties.

7. Mr. Agnani, learned Senior counsel for the Petitioner opposed the submission of the learned counsel for the AXIS Bank Limited on merits but suggested that they can be examined by the Arbitrator. He submitted that although the arbitration clause envisages the a five member arbitral tribunal, the Petitioner is agreeable to the appointment of a sole arbitrator for the adjudication of the disputes. All other parties agreed to the last submission.

8. The Court is of the view that all the contentions on merits of the parties including the maintainability of any claim even on the ground of limitation can be examined by a sole arbitrator.

9. Accordingly the Court appoints Ms. R Kiran Nath, a former District Judge as a 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).

10. The fees of the learned Arbitrator will be in terms of the Delhi High Court Arbitration Centre (Arbitrators' Fees) Rules.

11. The petition and the applications are disposed of. A copy of this order be communicated to Ms. R Kiran Nath as well as Additional Coordinator, DAC forthwith.

S. MURALIDHAR, J

DECEMBER 08, 2016
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