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

+ ARB.P. 32/2016 & IA No.452/2016

**GURBAKSH SINGH B.A BUILDERS
(PVT) LTD**

..... Petitioner

Through: Mr S. K. Jain and Ms Khushboo
Bhardwaj, Advocates.

versus

MALLANI INFOTECH PVT. LTD.

..... Respondent

Through: Ms Padma Priya, Advocate.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER

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05.08.2016

This is an application under Section 11 of the Arbitration and Conciliation Act, 1996 (hereinafter the 'Act'). The petitioner was awarded an execution of Civil Works of Plot No.A-1, Sector-68, Noida by a work order dated 23.05.2013 by the respondent. It is stated that certain disputes have arisen between the parties in relation to the said work order.

Admittedly, the disputes are to be resolved by arbitration in terms of the Arbitration Clause, which reads as under:-

“All disputes and differences regarding execution of contract or allied matters shall be referred to be the Architect and if his decision is not acceptable then the matter be refer to a mutually agreed Arbitrator who shall be nominee of Council of Arbitration or Council of Construction Industry Development. The venue shall be Delhi.”

The learned counsel appearing for the respondent submits that in terms of the Arbitration Clause, the petitioner was obliged to refer the matter

to the Architect and await his decision. An Arbitrator could be appointed only if the decision rendered by the Architect was not acceptable to either party. She submits that this is a mandatory procedure and it is not open for the petitioner to seek an appointment of Arbitrator without first referring the disputes to the Architect.

The learned counsel appearing for the petitioner states that the petitioner would have no objection to follow this procedure but he has certain reservations whether the Architect would be in a position to render a decision. Be that as it may, I am of the view that in the first instance, the procedure as stated in the Arbitration Clause must be followed.

At this stage, the learned counsel for the petitioner states that he would refer the disputes to the Architect, namely, Sushil Louis Karer, B. Arch., Principal, Planning and Design Services. The said Architect shall render a decision within a period of four weeks from the disputes being referred by the petitioner. In the event, the decision is not rendered within a period of four weeks it would be understood that the Architect is not in a position to render the decision and the parties will, thereafter, proceed to appoint a mutually acceptable Arbitrator. The aforesaid course is also acceptable to the respondent.

Accordingly, the present petition and the pending application are disposed of with the above observations. Needless to mention that the respondent is also not precluded from referring its counter claims to the Arbitrator after following the above procedure.

VIBHU BAKHRU, J

AUGUST 05, 2016/MK