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

+ **ARB.P. 143/2017**

DHANKESH YADAV & ANR. Petitioners
Through: Mr. Ashish Dogra, Advocate

versus

SUNDER SINGH @ SUNDER KHATRI Respondent
Through: Mr. M.P.S. Kasana, Advocate

CORAM:

HON'BLE MR. JUSTICE JAYANT NATH

ORDER

% 13.09.2017

1. This petition is filed under Section 11(5) of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as the Act) seeking appointment of a sole Arbitrator to adjudicate the disputes between the parties.
2. The parties entered into an agreement vide MoU dated 6.11.2013 with respect to property bearing no. 80/9 measuring 120 square yards, situated at Kishan Garh, Vasant Kunj, New Delhi – 110 070.
3. It is the case of the petitioner that on 1.12.2013, the respondent handed over vacant physical possession of the property to the petitioner for the purpose of raising construction. The disputes have arisen between the parties. The petitioner has sought to have filed the suit on 29.5.2014. The suit was withdrawn on 11.9.2015. Thereafter on 22.9.2015, the petitioner has invoked the arbitration clause and appointed Mr. Rajesh Sherawat, Advocate as his arbitrator. On 3.10.2015, the respondent has sent a reply to the above invocation of the arbitration clause by the petitioner, objecting to

the suggestion of the petitioner for appointment of Mr. Rajesh Sherawat, Advocate as an Arbitrator. The respondent in the said communication expressed their willingness to appoint Mr. Rakesh Kochhar, Advocate as an Arbitrator. It is the case of the petitioner that in view of the act of the respondents in proposing the different arbitrators, it was suggested by the Arbitrator nominated by the petitioner that the two arbitrators could be the part of the arbitral tribunal and the said two arbitrators could nominate the third arbitrator. However, there was no response from the respondents.

4. The respondents have filed their reply. In the reply, they submitted that in terms of the arbitration clause, the respondents have rejected the appointment of the arbitrator suggested by the petitioner. It is further pleaded that they have appointed Sh.Rakesh Kochar, Advocate as the sole arbitrator. Further, it is stated that as the petitioner has never objected to the said appointment of Sh.Rakesh Kochar, Advocate, the said person nominated by the respondents has now become the sole arbitrator.

5. Consequently, it is pleaded that the appointment of Mr. Rakesh Kochhar has become final.

6. The MoU between the parties dated 6.11.2013 has an arbitration clause being clause no.16 which reads as follows :-

“16.That in case of the difference of opinion regarding interpretation of these documents, rights, duties, obligation account or dispute of any nature, the same shall be referred to Arbitration of a person(s) mutually accepted by both the parties whose decision shall be final and binding on both the parties thereto.”

7. Hence, the arbitrator has to be appointed mutually by both the parties. From the exchange of correspondence between the parties, it is manifest that parties have failed to reach consensus on the arbitrator. In terms of Section

11(5) of the Arbitration and Conciliation Act where a sole arbitrator is to be appointed and the parties fail to agree on the arbitrator, the appointment is to be made upon a request of a party by the Supreme Court or as the case may be by the High Court etc.

8. In view of the above provision of law, there is no merit in the contention of the respondent that the person so nominated by the respondent has become now the sole arbitrator.

9. Accordingly, Mr.Jasmeet Singh, Advocate (Mobile No.: 9810064790) is appointed as the sole arbitrator to adjudicate the disputes between the parties. The arbitration proceedings will take place under the aegis of the Delhi International Arbitration Centre (DIAC). A copy of this order be sent to DIAC and to the learned Arbitrator.

10. The petition stands disposed of. All pending applications, if any, also stand disposed of.

JAYANT NATH, J.

SEPTEMBER 13, 2017/P