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

+ **ARB.P. 150/2017**

A2Z INFRA SERVICES LIMITED

..... Petitioner

Through: Mr Atul Kumar, Advocate.

versus

INDIA EXPOSITION MART LTD.

..... Respondent

Through: Mr Rajeev Kr Mishra and Mr Manish
Rai, Advocates.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER

% **28.03.2017**

1. The petitioner has filed the present petition under Section 11 of the Arbitration and Conciliation Act, 1996 (hereafter 'the Act'), *inter alia*, praying for appointment of an arbitrator to adjudicate the disputes that have arisen between the parties in relation to the Facilities Management Services Agreement dated 21.12.2014. The said agreement includes an arbitration clause which is set out below:-

“18. ARBITRATION

Any controversy, dispute or claim arising out of or relating to this Agreement or the breach hereof shall be endeavoured to be settled by mutual discussions between the parties within a period of one month from the date of notification of any such controversy, dispute or claim in writing by one party to the other and failing which by arbitration in accordance with the provisions of the Arbitration and Conciliation Act, 1996 of India. In the event of resolution by Arbitration, each party hereto shall appoint one arbitrator and the two arbitrators so appointed shall jointly appoint a third arbitrator. Arbitration shall be conducted in the English language. The Arbitrators shall be persons of repute and who are not directly or indirectly connected with any of the

parties to this Agreement and who have prior experience as arbitrators. Judgment upon the award rendered by the arbitrators may be entered in any court having jurisdiction thereof. Any remedy that would be available from a court of law or equity shall be available from the arbitrator(s). The arbitration hearing and all proceedings in connection therewith shall take place in Delhi, India. The arbitration hearing shall be commenced within Fifteen (15) days of the written demand for Arbitration by either party. The award shall be binding on both parties, non-applicable and immediately enforceable in a court of law or equity. Each party shall bear its own costs for the arbitration and any attorneys' fees. Notwithstanding the aforesaid or anything else contained in this Agreement any party may approach any court of competent jurisdiction to seek any urgent and/or injunctive relief (whether ad-interim, interlocutory or permanent) in order to prevent any grave and irreparable harm to it, without recourse to arbitration. Such remedy shall be in addition of and not in lieu of the appropriate relief by way of monetary damages.”

2. The petitioner invoked the arbitration clause by its letter dated 14.12.2016. The petitioner appointed Justice I.P. Vashishtha (Retired) as its nominee arbitrator and called upon the respondent to nominate an arbitrator too. However, the respondent has failed to do so.

3. Learned counsel for the respondent has raised a preliminary objection that this Court does not have the jurisdiction to entertain the present petition. He contends that no part of the cause of action has arisen in the National Capital Territory of Delhi. In my view, the aforesaid submission is without merit.

4. The Facilities Management Services Agreement dated 21.12.2014 was entered into at New Delhi and this is expressly indicated in the opening

lines of the said agreement. Further, the place of arbitration is also at Delhi and clause 23.1 of the agreement expressly provides that the courts at Delhi would have the exclusive jurisdiction. The learned counsel for the petitioner has also pointed out that the registered office of the respondent is also in Delhi.

5. The learned counsel for the petitioner also requests that instead of an arbitral tribunal of three members, a sole arbitrator may be appointed. However, this suggestion is repelled by the learned counsel for the respondent as he insists that a tribunal of three members is required to be appointed as per the arbitration clause. Accordingly, Justice Mool Chand Garg (Retired), former Judge of Madhya Pradesh High Court, (Mobile No.9899337979) is appointed as an Arbitrator. Both the Arbitrators shall jointly concur with appointment of the presiding Arbitrator for constitution of the arbitral tribunal in terms of the arbitration clause. This is subject to the Arbitrator making the necessary disclosure under Section 12 of the Act and not being ineligible under Section 12(5) of the Act.

6. The parties are at liberty to approach the Arbitrator for further proceedings.

7. The petition is disposed of.

VIBHU BAKHRU, J

MARCH 28, 2017

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