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

+ ARB.P. 166/2017

SMS PARKING SOLUTIONS PRIVATE LIMITED..... Petitioner
Through
versus

NORTH DELHI MUNICIPAL CORPORATION..... Respondent
Through

Present: Mr.Saurav Agarwal, Mr.Akhil Sachar, Mr.Satyawan
Sherawat and Ms.Aakriti Dawar, Advs.for the petitioner.
Ms.Madhu Tewatia, Mr.Adhirath Singh and Mr.Sachin
Saini, Advs. for NDMC.

CORAM:
HON'BLE MR. JUSTICE JAYANT NATH

ORDER
25.05.2017

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1. Present petition is filed under section 11 of the Arbitration and Conciliation Act, 1996 seeking to refer the disputes between the parties arising out of the agreement dated 23.7.2008 to an Arbitrator for adjudication.
2. The respondent had issued a tender document for developing automated multilevel parking cum commercial complex at Kamla Nagar, Delhi. On 29.10.2007 a letter of intent was issued to the petitioner and on 23.7.2008 a concession agreement was executed. Learned counsel for the

petitioner relies upon clause 20.1 of the said Agreement between the parties which read as follows:-

“Section 20.1 Mediation by Commissioner

(a) The Party that initially issued the notice of intention to refer the matter to the MCD and MCD in Consultation with Consultant will appoint an officer who will look into the written documents; (i) a description of dispute; (ii) a statement of that party's position; and (iii) copies of relevant documentary evidence in support of such position.

(b) Within 10 days of receipt of the above documents, the other parties shall submit; (i) a description of the dispute; (ii) a statement of that party's position; and (iii) copies of relevant documentary evidence in support of such position.

(c) The officer appointed by MCD may call for such further documentary evidence and/or interview such persons, as it may deem necessary in order to reach a decision.

(d) The officer appointed by MCD shall give notice to the parties of its decision within 20 days of receipt of the documents provided by the parties pursuant to subsection (b) and (c) above. The decision of the officer appointed by MCD shall be binding.

(e) The officer appointed by the MCD should give decision in writing. The decision of the MCD shall be final and binding on parties.”

3. Learned counsel appearing for the petitioner relies upon the judgment of this court in Arb.Petition No.793/2016 dated 9.3.2017 to contend that almost identical clause has been interpreted and construed to an arbitration agreement.

4. A perusal of the aforesaid judgment relied upon by the learned

counsel for the petitioner would show that the clause that was subject matter of the said judgment was virtually identical to the present clause. Relevant portion of the order dated 9.3.2017 in Arb.Petition No.793/2016 reads as follows:-

“23. The decisions cited by Mr. Mittal only reiterate the well-settled position that in the absence of an agreement between the parties, there can be no reference of disputes to arbitration. However, that is not the point of dispute as far as the present case is concerned. The question really is whether Article 20 read with Sections 20.1, 20.2 and 20.3 can be construed to be an arbitration agreement. The said clauses read as under:

“Article 20: Disputes In the event that any dispute, controversy or claim arises among the Parties in connection with or under this Agreement or the interpretation of any of its provisions or upon the occurrence of an event of Default any party shall refer the dispute, controversy or claim to the Commissioner, MCD.

Section 20.1 Mediation by Commissioner

The Party that initially issue the notice of intention to refer the matter to the MCD and MCD in Consultation with Consultant will appoint a officer from within or outside MCD who will look into the written documents; (i) a description of dispute; (ii) a statement of that party's position; and (iii)"copies of relevant documentary evidence in support of such position.”

Section 20.2 Performance during Dispute Resolution

Pending the submission of a dispute, controversy or claim to the officer appointed by the MCD and thereafter until the final decision of the officer appointed by the MCD, as the case may be, the parties shall continue to perform all of their

obligations under this Agreement, without prejudice to a final adjustment in accordance with such decision.

Section 20.3 Survival

The provisions relating to indemnification contained in Section 15.2, intellectual property contained in Section 18, confidentiality contained in Section 19.1 and the dispute resolution provisions contained in this Article 20 shall survive the termination of this Agreement.”

1. It is clear in view of the said judgment that the present clause which is subject matter of the present petition is a valid arbitration agreement, Accordingly, I appoint Mr.Justice P.K.Bahri, (Retd.), (Mobile: 9818542737) as an Arbitrator. The Arbitrator shall fix his fee in consultation with learned counsel for the parties and may also take steps under section 12 of the Act.
5. Parties to appear before the learned Arbitrator on 12.7.2017 at 4:00 PM. Copy of the order be sent to the learned Arbitrator.
6. Petition stands disposed of. All pending applications, if any, also stand disposed of.

JAYANT NATH, J

MAY 25, 2017

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