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

+ **ARB.P. 225/2017**

XPERT JBMS PVT. LTD & ANR.

..... Petitioners

Through: Mr Sanjeev Narula, Mr Anshuman
Upadhyay and Mr Sagar Agnihotri,
Advocates.

versus

ARCEE TRADING CORPORATION

..... Respondent

Through: Mr Tanmay Rastogi, partner of the
respondent.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER

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17.04.2017

1. The petitioner has filed the present petition under Section 11 of the Arbitration and Conciliation Act, 1996, *inter alia*, praying that that an arbitrator be appointed to adjudicate the disputes that have arisen between the parties in relation to the Lease Purchase Agreement dated 03.03.2014. The said agreement includes an arbitration clause, which is set out below:-

“ARBITRATION

10.11 Except where it has been provided otherwise, any dispute or difference arising out or in connection with the present agreement between the parties including any dispute or difference relating to the interpretation of the agreement or any clause thereof shall be referred to arbitration by an arbitrator appointed by mutual consent according to provisions of the Arbitration Act, 1940 and rules thereunder and any amendment thereto from time to time shall apply.

The award of the arbitrator shall be final, conclusive and binding on all the parties. The arbitrator shall be competent to decide whether any matter of dispute or difference referred to him falls within purview of arbitration as provided for above and/or for any matter relating to arbitration under the Arbitration Act, 1940.”

2. Mr Tanmay Rastogi, partner of the respondent is present in the Court and submits that the respondent had invoked the arbitration clause and appointed the arbitrator.

3. Mr Narula, the learned counsel for the petitioner has drawn the attention of this court to the legal notice dated 22.02.2017, sent on behalf of the respondent wherein the respondent had suggested that Shri M. B. Harikant, Advocate be appointed as the sole arbitrator. The said suggestion was not accepted by the petitioner and this was communicated to the respondent by a letter dated 09.03.2017. Notwithstanding that the petitioner had not concurred with the appointment of the arbitrator as suggested by the respondent, it appears that the arbitrator so suggested has attempted to enter upon reference and has issued a notice to the parties.

4. Clearly, the arbitrator appointed unilaterally by the respondent would have no jurisdiction to adjudicate the disputes between the parties. The arbitration clause specifically requires the concurrence of both the parties for appointment of an arbitrator. Since, the parties are unable to agree on appointment of the arbitrator, it is necessary that an arbitrator be appointed by this Court.

5. In view of the above, Justice R.C Chopra (Retd.), former Judge of this

Court (Mobile No. +91 9818097777) is appointed as the sole arbitrator to adjudicate the disputes between the parties. This is subject to the arbitrator making the necessary disclosure under Section 12(1) of the Act and not being ineligible under Section 12(5) of the Act. The fees of the arbitrator shall be fixed in consultation with the counsel for the parties.

6. The parties are at liberty to approach the arbitrator for eliciting the necessary disclosure and for further proceedings.

7. The petition is disposed of.

VIBHU BAKHRU, J

APRIL 17, 2017

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