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

+ **ARB.P. 247/2017**

BHOOMIKA INFRABUILDCON PVT.LTD Petitioner

Through: Mr Harsh Pratap Shahi and Mr
Rishab Kaushik, Advocates.

versus

B.N. BUILDCON INDIA PVT. LTD. Respondent

Through: Mr Sandeep Sharma and Mr Aman
Dhyani, Advocates.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER

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17.04.2017

IA No.4469/2017

1. Allowed, subject to all just exceptions.
2. The application stands disposed of.

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3. The petitioner has filed the present petition under Section 11 of the Arbitration and Conciliation Act, 1996, (hereafter 'the Act'), *inter alia*, praying that an Arbitrator be appointed to adjudicate the disputes that have arisen between the parties in relation to an agreement dated 26.11.2012 (hereafter "the Agreement").

4. Mr Sharma, learned counsel for the respondent submits that the disputes between the parties have already been referred to arbitration and the

arbitrator has already been appointed to adjudicate the disputes between the parties pursuant to an order dated 30.09.2016 passed in **M/s B.N. Buildcon India Pvt. Ltd v. Bhoomika Infrabuildcon Pvt. Ltd**: ARB.P. No.466/2016. The learned counsel for the petitioner submits that the said arbitration is in respect of an agreement (hereafter "the said agreement") which was not executed between the parties. He has also drawn the attention of this Court to paragraph XIX of the petition wherein the petitioner has asserted that the said agreement was "*never executed between the Petitioner and the Respondent*". The petitioner further claims that the respondent has raised invoices on the basis of the Agreement, which is a labour rate contract. In other words, according to the petitioner, the respondent had raised invoices on the basis of the Agreement and not on the basis of the said agreement which was the subject agreement in ARB.P.466/2016.

5. Mr Sharma stoutly disputes the contention that the said agreement had not been entered into.

6. Be that as it may, it is not disputed that the Agreement - which is enclosed with the present petition - was also entered into between the parties and the Agreement also includes an arbitration clause, which reads as under:-

“7. All disputes are subjected to Delhi Jurisdiction & Delhi Arbitration.”

7. The learned counsel for the respondent does not dispute that the said clause constitutes an arbitration agreement.

8. In view of the above, an arbitrator is required to be appointed to

adjudicate the disputes that have arisen in relation to the Agreement. In view of the peculiar controversy being raised in the present case, it would be expedient if the arbitrator appointed pursuant to the order passed in ARB.P. 466/2016 is also appointed as the arbitrator to adjudicate the disputes relating to the Agreement. Accordingly, with the consent of the parties, Justice R.C. Jain (Retired), a former Judge of this Court is appointed as a Sole Arbitrator to adjudicate the disputes that have arisen between the parties in respect of the Agreement. The arbitration shall be conducted under the aegis of Delhi International Arbitration Centre (DIAC) and in accordance with its Rules.

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

10. The petition is disposed of.

VIBHU BAKHRU, J

APRIL 17, 2017
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