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

+ ARB.P. 363/2017

M/S SELECTIVE REALTORS PVT LTD Petitioner

Through Mr.Brij B.Gupta, Sr. Adv. with
Ms.Jasbir Kaur, Mr.Manmeet Singh and
Mr.Apoorv Gupta, Advs.
versus

DEWAN HOUSING FINANCE CORPORATION
LTD. (NBFC) Respondent
Through Mr.Anurag Abhishek, Adv.

CORAM:

HON'BLE MR. JUSTICE JAYANT NATH

ORDER

% **10.10.2017**

1 This petition is filed under section 11(6) of the Arbitration and Conciliation Act, 1996 seeking to appoint an Arbitrator in terms of Article 12 of the Agreement between the parties. It is the case of the petitioner that the petitioner availed a loan from the respondent to the tune of Rs.2,40,00,000/- approximately.

2 Disputes having arisen between the parties the petitioner is stated to have moved pre-litigation mediation before the Delhi High Court Mediation and Conciliation Centre in order to resolve the disputes . The parties appeared before the Mediation Centre but unfortunately were not able to resolve their disputes. At that stage, the petitioner has sent a notice dated 22.3.2017 invoking the arbitration clause on behalf of the petitioner.

3 The arbitration clause as contained in the loan agreement dated 30.10.2013 reads as follows:-

“Article – 12

Arbitration

All matters, questions, disputes, differences and /or claims arising out of and/or concerning and/or in connection in consequences of breaches, termination or invalidity thereof or relating to this Agreement whether or not obligation either or both the parties under this contract be subsisting at the time of such dispute and whether or not this Agreement been terminated or purported to be terminated or completed shall be referred to the Sole Arbitration of the Managing Director, Executive Director(s), President(s) or Vice President(s) of the DHFL or any other authorized person appointed/nominated by the Managing Director, Executive Director(s), President(s) or Vice President(s) or any Officer/Executive not below the level of Senior Manager of the DHFL as his nominee. The proceedings of the arbitration shall be held at the registered office of the DHFL or any other place to be notified for the same, by the arbitration. The decision /award of the Arbitrator so appointed shall be final and binding on the parties to this Agreement, arbitration shall be conducted in accordance with the provisions of Arbitration and Conciliation Act. 1996" thereunder and any amendments thereto. The language of Arbitration shall be English."

4 Learned counsel for the respondent has entered appearance and submits that had the petitioner approached the respondent the respondent would have appointed an Arbitrator in terms of the arbitration clause. Hence, he submits that the present petition is not maintainable.

5 Perusal of the arbitration clause between the parties shows that the matter is to be referred to the Sole Arbitration of the Managing Director or other officers of the respondent or the person nominated by the Managing Director or Officers.

6 The Supreme Court in the case of ***TRF vs. Engero Engineering Project Ltd., (2017) 8 SCC 377*** has held that in the eventuality of such an

arbitration clause the concerned named Arbitrator apart from the fact that he is forbidden from acting as an Arbitrator in view of Section 12(5) read with section 7 Schedule of the Act, is also forbidden from nominating a Sole Arbitrator. The Supreme Court held as follows:-

“57. In such a context, the fulcrum of the controversy would be, can an ineligible arbitrator, like the Managing Director, nominate an arbitrator, who may be otherwise eligible and a respectable person. As stated earlier, we are neither concerned with the objectivity nor the individual respectability. We are only concerned with the authority or the power of the Managing Director. By our analysis, we are obligated to arrive at the conclusion that once the arbitrator has become ineligible by operation of law, he cannot nominate another as an arbitrator. The arbitrator becomes ineligible as per prescription contained in Section 12(5) of the Act. It is inconceivable in law that person who is statutorily ineligible can nominate a person. Needless to say, once the infrastructure collapses, the superstructure is bound to collapse. One cannot have a building without the plinth. Or to put it differently, once the identity of the Managing Director as the sole arbitrator is lost, the power to nominate someone else as an arbitrator is obliterated. Therefore, the view expressed by the High Court is not sustainable and we say so.”

7 Keeping in view the above facts it is manifest that in terms of the above arbitration clause the respondent cannot nominate the Sole Arbitrator. Accordingly, Mr. Justice R.V. Easwar (Retd.) (Mobile No. 9560899997) is appointed as a Sole Arbitrator to adjudicate the dispute between the parties. He will fix his fee in consultation with learned counsel for the parties.

8 Petition stands disposed of. Parties to appear before the learned Arbitrator on 3.11.2017 at 4:00 PM.

JAYANT NATH, J

OCTOBER 10, 2017/n