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

+ **ARB.P. 709/2016**

V.V. CONSTRUCTION CO.

..... Petitioner

Through Mr Sakal Bhushan, Advocate.

versus

RAMAN VIHAR CGHS LTD.

..... Respondent

Through Mr A.P. Singh, Advocate.

**CORAM:**

**HON'BLE MR. JUSTICE VIBHU BAKHRU**

**ORDER**

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**11.04.2017**

1. The petitioner has filed the present petition under Section 11 of the Arbitration and Conciliation Act, 1996 (hereafter 'the Act'), *inter alia*, praying that an arbitrator be appointed to adjudicate the disputes that have arisen between the parties.
2. The respondent society disputes the validity of the agreement sought to be relied upon by the petitioner principally on the ground that the said agreement was executed by one Mr Ajay Solanki, who was then the Secretary of the respondent society and there are several allegations of fraud, misrepresentation and fraudulent misuse of funds of the society against Mr Ajay Solanki. The respondent society also alleges that there is collusion between the petitioner firm and Ajay Solanki to further cause loss to the respondent society. The respondent society also states that the petitioner firm is "bogus".
3. It is not disputed that the construction has been carried out by the

petitioner firm inasmuch as the building is now ready and members of the respondent society are residing in the said building. The petitioner also claims that it has been paid a sum of ₹2,32,35,000/- as part consideration for the works carried out by it.

4. The agreement in question has been signed by Mr Ajay Solanki who was admittedly the then office bearer of the respondent society. It is also claimed by the respondent society that the management committee of the respondent society was in control of the Solanki family at the material time. The petitioner also produced the original document including notice inviting tenders dated 30.08.2009. The articles of agreement and other relevant documents *ex facie* indicate the existence of an agreement between the parties.

5. The question whether there has been any collusion between the petitioner and the then office bearers of the respondent society is a matter which would be required to be adjudicated by the forum of choice.

6. At this stage, the learned counsel for the respondent society has also drawn the attention of this Court to clause 37 of the agreement and on the strength of the said clause submitted that the respondent society would be satisfied if the petitioner makes its claim before the current office bearers along with all necessary documents and the respondent society would make all endeavours to ensure that all legitimate claims of the petitioner are addressed. He states that the principal difficulty in resolving the disputes is the lack of material available with the respondent society. In the aforesaid circumstances and with the consent of the parties, following directions are passed:

(a) that the petitioner shall make a statement of claims providing

complete details of the payment demanded along with all necessary supporting documents to the respondent society within a period of four weeks from today;

(b) that the respondent society shall consider the same and take a final decision within a period of eight weeks thereafter;

(c) that the respondent society is also entitled to call for such other clarification as may be required, although, the same would not extend the time as available to the respondent society to take a final decision.

7. In case the disputes still survive, the same would be adjudicated by Justice Nisar Ahmad Kakru, (Retired) (Mobile No. 07382603046 & 9419000938) who is appointed as the sole arbitrator in place of the arbitral tribunal as contemplated under the agreement. 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. It is further clarified that no further order for appointing the arbitrator would be necessary and if the petitioner is aggrieved by the decision taken by the respondent society, the petitioner would be at liberty to approach the arbitrator and file its statement of claims.

8. In view of the order passed above, in the first instance, the respondent society will examine the claims. It is directed that the arbitrator will not enter upon reference for a period of 12 weeks from today (four weeks for making the claims and eight weeks for the respondent society to render the decision). In the event, the disputes are resolved, the parties shall inform the arbitrator and he would not be required to take any further proceedings towards the arbitration. However, if the petitioner is dissatisfied by the decision rendered on account of non-rendering of any decision within the specified period, the

parties shall approach the arbitrator as directed. The arbitrator shall fix the fees in consultation with the counsel for the parties. All contentions of the parties before the arbitrator are kept open. It is clarified that the respondent is also at liberty to raise all its claims.

9. Accordingly, the petition and any pending application are disposed of.

**VIBHU BAKHRU, J**

**APRIL 11, 2017**

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