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

+ **ARB.P. 822/2016**

CIVILCON ENGINEERS

..... Petitioner

Through: Mr Kamal Nijhawan and Mr Sumit  
Guar, Advocates.

versus

THE MUSKAAN C.G.E CO-OP

GROUP HOUSING SOCIETY LTD.

..... Respondent

Through: Mr Yogendra Kumar Saraswat,  
President (The Muskaan CGE Co-  
Op).

**CORAM:**

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

**ORDER**

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**10.04.2017**

1. The petitioner has filed the present petition under Section 11 of the Arbitration and Conciliation Act, 1996 (hereafter 'the Act') praying that an arbitrator be appointed to adjudicate the disputes that have arisen in relation to an agreement entered into between the parties on 23.04.2010. The said agreement includes an arbitration clause which is set out below:-

**"CLAUSE- 28: SETTLEMENT OF DISPUTES BY  
ARBITRATION**

If any dispute, question or controversy, the settlement of which is not herein specifically approved for, shall at any time arise between the society and the contractor relating to thin contract or any clause or thing contained or the construction thereof or any matter connected with this contract, or the portion of the same or the right or duties or liabilities of either party, then in every such case, the matter in dispute shall be referred to the arbitration of Architect of the Society. The Architect shall be

the sole arbitrator. The provisions of the Indian Arbitration Act, 1940 as amended from time to time shall supply to such arbitration proceedings. Arbitration proceedings shall be held in Delhi and only Delhi courts will have the jurisdiction in the matter. It will not be open to the contractor to object to the appointment of such persons as Arbitrator on the ground that he has dealt with the matter in question in the course of his duties or has expressed views on all or any matter in dispute. Service under this contract shall notwithstanding the existence of any such dispute/question controversy, continue during the arbitration proceedings and no payment due to or payable by the society to the contractor or vice/versa shall be withheld on account of such proceedings unless such payments are the direct subject of such arbitration proceedings. It is also a term of the contract that the party invoking arbitration shall specify the dispute or disputes to be referred to arbitration under this clause together with the amount or amounts claimed in respect of each such dispute and in the event of non-availability of specifications in C. P. W. D. relevant 1996 Vol. I to VI. If for any reason, that is not possible, the matter is not to be referred to arbitration at all. In all cases where the total amount of all claims in dispute is Rs.75,000/- (Rupees Seventy Five Thousand Only) and above, the arbitration shall give reasons for the award.

If the contractor(s) do / does not make any demand for arbitration in respect of any claims(s) in writing within 90 days of receiving the intimation from the Society bill is ready for payment, the claims of the (s) will be deemed to have been waived and absolutely barred and the Society shall be discharged and released of all liabilities under the contract in respect of these claims.

The arbitrator may from time to time with the consent of the parties, enlarge the time for making and publishing the award.

Subject as aforesaid the provisions of the Arbitration Act, 1940 or any statutory modification or re enactment thereof and the rules made there under and for the time being in force shall apply to the arbitration proceeding under their clause.”

2. The petitioner claims that in terms of the arbitration clause, it addressed the letter dated 19.11.2014 to M/s Dharam Das and Associates, Architects requesting the arbitrator to enter upon reference. However, it is stated that the arbitrator has not responded to the aforesaid request.

3. The respondent society is disputing the existence of any disputes. Mr Yogendra Kumar Saraswat, President of the respondent society is present and states that he has been one of the founder members of the society and has never heard of any disputes with the contractor.

4. Be that as it may, in view of the arbitration agreement (clause), all controversies are required to be addressed by the arbitrator.

5. Accordingly, it is directed that an Arbitrator be appointed under the Rules of the Delhi International Arbitration Centre (DIAC). The representatives of the parties shall appear before the Co-ordinator, DIAC on 20.04.2017 at 11:00 AM. The arbitration shall be conducted under the aegis of DIAC and in accordance with its Rules.

6. The petition is disposed of.

**VIBHU BAKHRU, J**

**APRIL 10, 2017**

**RK**