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

+ ARB.P. 516/2017

SKYLINE ENGINEERING CONTRACTS(I)

PVT. LTD.

....Petitioner

Through Mr.Jivesh Nagrath & Mr.Chitvan,
Advocates

versus

SOHNA CITY, LLP

..... Respondent

Through Mr.Rajshekhar Rao, Mr.Manu Nair,
Mr.Kuber Dewan & Mr.Neelabh
Shreesh, Advocates

CORAM:

HON'BLE MR. JUSTICE JAYANT NATH

ORDER

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18.09.2017

1. This petition is filed under Section 11(6) and (8) of the Arbitration and Conciliation Act, 1996 (*hereinafter referred to as 'the Act'*) seeking appointment of a sole arbitrator to adjudicate the disputes between the parties.
2. Some of the relevant facts are that the respondent issued a tender for work for Phase-1 of the Villas being developed by the respondent at Arabella Project at Sohna City, Sector 11 and 14, Village Raipur, Sohna, Gurgaon, Haryana. The petitioner was a successful bidder and was issued a Letter of Intent dated 08.08.2014.
3. Disputes having arisen between the parties, the petitioner invoked the arbitration clause vide communication dated 31.08.2016. A reply was sent by the respondent on 14.09.2016 refuting the contention of the petitioner.

4. Reliance is placed on the clauses 15 and 16 of the agreement to contend that in terms of the aforesaid agreement, a sole arbitrator was to be appointed by the respondent. It is submitted that in view of the judgment of the Supreme Court in the case of **TRF. v. ENERGO ENGINEERING PROJECTS LTD. & ANR. 2017(7) SCALE 162**, the respondent is precluded from appointing an arbitrator. Hence, he submits that this court may appoint an independent arbitrator.

5. The learned counsel appearing for the respondent, however, submits that in terms of the clause 15, the arbitration proceedings are to be held in Mumbai as the seat of arbitration is in Mumbai. He also submits that he has no objection in case this court appoints an arbitrator who may hold proceedings in Mumbai. He also submits that as noted in the arbitration clause, the petitioner sought to nominate a retired judge based in Mumbai.

6. Relevant clauses of the agreement read as follows:

“15.ARBITRATION: All disputes arising out of this Agreement shall be first settled amicably. If the dispute is still not settled amicably, then the same shall be referred for arbitration of sole arbitrator appointed by Employer under the Arbitration and Conciliation Act, 1996. Place of arbitration shall be Mumbai and the arbitration proceedings shall be conducted in English language. Award of arbitration shall be final and binding on both the parties.

10.GOVERNING LAW AND JURISDICTION:

This Agreement shall be governed by the law of India. Courts at Delhi shall have exclusive jurisdiction to entertain and adjudicate the matters or disputes arising out of Arbitration.”

7. The obvious interpretation to ensure that neither of the clauses is ignored to hold that in view of the above clauses the seat of arbitration is

Delhi as Courts in Delhi have exclusive jurisdiction to entertain and adjudicate the matters or disputes arising out of the arbitration. However in view of Clause 15, the arbitration proceedings are to take place in Mumbai, that being the venue chosen by the parties.

8. Accordingly, I appoint Justice Palshikar (Rtd) Mobile No. 9819442856 as the sole arbitrator to adjudicate the dispute between the parties. The venue of the proceedings shall be Mumbai. The learned Arbitrator may fix his fees in consultation with the learned counsel for the Parties.

9. The petition stands disposed of as above.

JAYANT NATH, J.

SEPTEMBER 18, 2017/v