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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ O.M.P.(I) (COMM.) 28/2018
CAPRI GLOBAL CAPITAL LTD.

..... Petitioner
Through Mr. Prakash Gautam and Mr. Shobhit
Jain, Advs.

versus

ZILLION INFRAPROJECTS PVT. LTD. & ORS.

..... Respondents
Through Ms. Swati Bhushan Sharma and Mr.
Shivam Sachdeva, Advs. for R-1 to
R-5.

CORAM:
HON'BLE MR. JUSTICE RAJIV SHAKDHER

ORDER

% **30.11.2018**

1 This is a petition under Section 9 of the Arbitration and Conciliation Act, 1996 (in short '1996 Act').

2 Learned counsel for the petitioner concedes that respondents No. 6 to 8 are not proper and necessary parties to the present proceedings.

3 Ms. Swati Bhushan Sharma, who, appears for the remaining respondents i.e. respondents No. 1 to 5, on the other hand, also concedes that the said respondents are not parties to the loan agreement dated 26.10.2016.

4 Accordingly, respondents No. 6 to 8 are deleted from the array of parties.

5 As a matter of fact, the petitioner had loaned a sum of Rs.4.30

crores to respondent No.1. The remaining respondents i.e. respondents No. 2 to 5, are co-borrowers.

6 There is no dispute raised by the learned counsel for the respondents as to the existence of the arbitration agreement, which is contained in Clause 13.15 of the loan agreement.

7 The record shows that notice was issued in the captioned petition by this Court on 19.01.2018 and this Court directed the respondents to maintain *status quo* with regard to possession and title of the mortgaged property, described as: Unit No. 709, 7th Floor, Commercial Complex, known as Universal Business Park, Sector-66, Gurgaon-122001, Haryana.

8 As indicated above, respondents No. 6 to 8 have already been deleted from the array of parties. Learned counsel for the remaining respondents, in these circumstances, says that she would have no difficulty if this Court were to appoint an Arbitrator in the matter. Furthermore, learned counsel for the parties say that pending adjudication of the dispute before the learned Arbitrator, Section 9 petition can be placed before the Arbitral Tribunal for further adjudication.

9 Accordingly, the petition is disposed of with the following directions:

(i) Hon'ble Mr. Justice Vijender Jain, former Chief Justice Punjab & Haryana High Court (Contact No.0120-2511535), is appointed as an Arbitrator in the matter.

(ii) Learned Arbitrator will be paid his fees in accordance with the Fourth Schedule appended to the 1996 Act.

- (iii) The captioned petition will be placed before the Arbitral Tribunal. The Arbitral Tribunal will treat the same as an application under Section 17 of the 1996 Act.
- (iv) Pending adjudication, the interim order dated 19.01.2018, passed by this Court, will continue to operate.
- (v) The Arbitral Tribunal, however, will have the liberty to either vacate or vary or even affirm the order dated 19.01.2018.
- (vi) Needless to say, if the petitioner was to move an interim application for further relief, the same will be considered by the Arbitral Tribunal.

RAJIV SHAKDHER, J

NOVEMBER 30, 2018

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