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IN THE HIGH COURT OF DELHI AT NEW DELHI

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ARB.P. 73/2018

FUTURE GAMING AND HOTEL SERVICE PVT LTD

..... Petitioner

Through Mr. Abhijeet Singh, Mr. Ayush
Agrawal, Mr. Vikran Singh Bloria,
Mr. Mangesh Krishna and Mr. Aditya
Shukla, Advs.

versus

MANI KUMAR SUBBA & ANR.

..... Respondents

Through Mr. Kunal Sabharwal, Adv for R-1.
Mr. Balbir Singh, Sr. Adv with Mr.
S.N. Tyagrajan, Adv for R-2.

CORAM:

HON'BLE MR. JUSTICE RAJIV SHAKDHER

ORDER

% **21.08.2018**

ARB.P. 73/2018

1 This is a petition under Section 11 (6) of the Arbitration and Conciliation Act, 1996. The petitioner seeks appointment of an Arbitrator pursuant to an agreement dated 02.04.2015. The peculiarity of this agreement is that while the said agreement mentions the petitioner and respondent No.1 as parties to the agreement, respondent No.2 has been referred to as the conforming party. Therefore, what lies at the heart of the dispute before me is : whether respondent No.2 is a party to the arbitration agreement.

2 Learned counsel for the parties have advanced arguments at length on this issue. While it was the contention of Mr. Sinha that

respondent No.2 is a party to the arbitration agreement, Mr. Balbir Singh, learned senior counsel, who appears for respondent No.2 contends to the contrary. It is, however, the contention of the parties that evidence may have to be led on this aspect of the matter and, therefore, it is only, thereafter, that the Arbitrator may be able to come to a conclusion, one way or the other, as to whether respondent No.2 ought to be considered as a party to the arbitration agreement.

3 Since, there is no dispute with regard to an arbitration agreement obtaining between the petitioner and respondent No.1, parties have agreed that this petition can be disposed of based on the following directions:

- (i) Hon'ble Mr. Justice Ajit Bharihoke, Former Judge of this Court shall stand appointed as an Arbitrator in the matter.
- (ii) The learned Arbitrator will delve into the issue as to whether or not respondent No.2 is a party to the arbitration agreement, notwithstanding, the nomenclature given to respondent No.2 in the main agreement.
- (iii) The arbitration proceedings shall be conducted in consonance with the Rules and Fee Schedule prescribed by the Delhi International Arbitration Centre.

4 Needless to say, in case the petitioner or respondent No.2 is aggrieved by the determination made by the learned Arbitrator with regard to whether or not respondent No.2 is a party to the arbitration agreement, they would have liberty to take recourse to the extant of provisions of law, to ventilate their grievance.

5 Petition is disposed of with the aforesaid directions.

I.A. Nos. 9664-65/2018

6 In view of the order passed in the main petition, the captioned interlocutory applications shall stand closed.

RAJIV SHAKDHER, J

AUGUST 21, 2018

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