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IN THE HIGH COURT OF DELHI AT NEW DELHI

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ARB.P. 293/2018

SAKET RAI

..... Petitioner

Through: Mr.Gaurav Puri, Ms.Tanya Chawla,
Ms.Neha Bhutani, Ms.Namrita
Chadha & Mr.Aditya Bali, Advs.

versus

TULSIANI CONSTRUCTIONS & DEVELOPERS PVT. LTD.

..... Respondent

Through: Mr.Jitender Chaudhary, Adv.

CORAM:

HON'BLE MR. JUSTICE NAVIN CHAWLA

ORDER

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04.09.2018

This petition under Section 11 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as the 'Act') has been filed by the petitioner seeking appointment of an Arbitrator for adjudicating the disputes that have arisen between the parties in relation to the Memorandum of Understanding dated 02.07.2015 executed between them. The said Memorandum of Understanding contains an Arbitration Agreement in form of Clause 6.5 thereof, which is reproduced hereinunder:-

“6.5 That in case of dispute or difference arises between the parties, hereto regarding the claim of any party regarding the implementation of this MoU or interpretation meaning of any of the clauses herein would be resolved through mutual negotiations by the parties, failing which, the dispute would be referred to the Arbitral Tribunal as per the terms & conditions follows:

6.5.1. That each party would appoint an Arbitrator. The appointed Arbitrator must be a practicing Chartered Accountant (CA) or Lawyer.

6.5.2. That English would be the language of the Arbitration proceeding and its award.

6.5.3. That the Arbitration proceeding would take place at Delhi or anywhere in Delhi NCR.

6.5.4. That the Arbitration Tribunal shall make their award within three months of entering into Arbitration Notice. However, the time frame can be extended by mutual consent of the Arbitrators.

6.5.5. That the parties would co-operate and lead evidences etc. with the Arbitral Tribunal and if one of the parties does not co-operate or does remain absent at the reference; then the Arbitration Tribunal would be at liberty to proceed with the reference ex-parte.

6.5.6. That the award of the Arbitration Tribunal shall be final, conclusive and binding on the parties.

6.5.7. That no action can be taken under this MoU for the enforcement of any right without resorting to Arbitration under this clause.

6.5.8. That this reference to Arbitration shall be deemed to be a reference within the meaning of the Arbitration and Conciliation Act, 1996 or any statutory modification thereof.

6.5.9. All disputes are subject to Delhi jurisdiction only.”

Disputes having arisen between the parties, the petitioner invoked the Arbitration Agreement vide its notice dated 03.01.2018. Having failed to receive any response from the respondent, the present petition was filed.

Learned counsel for the respondent submits that the claims raised by the petitioner would not fall within the ambit of the Memorandum of Understanding. He further submits as the Memorandum of Understanding was executed in the State of Uttar Pradesh and relates to property which is also situated at Lucknow, Uttar Pradesh, this Court would not have jurisdiction to entertain this petition.

I do not find merit in the contention raised by the respondent. The

existence of the Arbitration Agreement and due invocation thereof is not denied by the respondent. Whether the claims that may be filed by the petitioner before the Arbitrator would fall within the ambit and scope of the Memorandum of Understanding between the parties cannot be pre-judged by this Court at this stage. This would be a question which would be taken up by the Arbitrator for adjudication only on filing of the Statement of Claim before him.

As far as the jurisdiction of this Court is concerned, the Arbitration Agreement between the parties states that the arbitration proceedings shall take place at Delhi. In view of the judgment of the Supreme Court in *Indus Mobile Distribution Private Limited vs. Datawind Innovations Private Limited and Others*, (2017) 7 SCC 678, this Court would have the exclusive jurisdiction to entertain the present petition.

With the consent of the parties, parties are referred to the Delhi International Arbitration Centre (DIAC), which shall appoint a Sole Arbitrator for adjudicating the disputes that have arisen between the parties in relation to the abovementioned Memorandum of Understanding. All contentions of the respondent shall remain open in such arbitration proceedings. The arbitration and the fee shall be governed by the DIAC rule. The parties shall appear before the DIAC on 27th September, 2018 at 4:00 p.m.

The petition is disposed of in the above terms with no order as to cost.

NAVIN CHAWLA, J

SEPTEMBER 04, 2018/rv