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

+ **O.M.P. (T) (COMM.) 33/2018**

AKSHAY AHUJA

..... Petitioner

Through Mr Arun Monga, Ms Divya Sharma,
Ms M. Kalkoley, Advocates.

versus

BHASIN INFOTECH & INFRASTRUCTURE
PVT LTD

..... Respondent

Through

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER

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01.05.2018

IA No. 5849/2018

1. Allowed, subject to all just exceptions.
2. The application is disposed of.

O.M.P. (T) (COMM.) 33/2018 & IA No. 5850/2018

3. The petitioner has filed the present petition under Section 14 of the Arbitration and Conciliation Act, 1996 (hereafter 'the Act'), inter alia, praying as under:-

“Declare that the mandate of the Arbitral Tribunal, comprising of present Sole Arbitrator Smt. Sarka Jetley Kochar, Advocate, stands *de jure* terminated and she no longer has the mandate to act as the arbitrator and preside over the proceedings in the arbitration matter titled “*Akshay Ahuja and Bhasin Infotech & Infrastructure Pvt. Ltd.*”, and no further proceedings in the arbitration may be presided over

or adjudicated by the said arbitral tribunal and;

Declare that the proceedings conducted by the Arbitral Tribunal comprising of Sole Arbitrator Smt. Sarika Jetley Kochar, Advocate and all orders passed by him have become a nullity;”

4. The learned counsel for the petitioner has canvassed the present petition on two grounds. First, the petitioner submits that the application form furnished by the petitioner includes an arbitration clause that reads as under:-

“The arbitration proceedings shall be held at any appropriate location in Delhi by a sole arbitrator who shall be appointed by the mutual consent of the Intending Seller and the Allottee, and whose decision shall be final and binding upon the parties.”

5. It is the petitioner’s case that the said clause was fraudulently substituted by the respondent while executing the allotment letter to provide that the arbitrator would be appointed by the respondent. The learned counsel submits that the petitioner had already paid 76% of the consideration along with his application form and was under financial duress to accept the documentation as provided by the respondent.

6. Second, the learned counsel for the petitioner states that according to the letter dated 10.03.2018 the respondent had specifically stated that it had returned the amount received from the petitioner after making due adjustment and had cancelled the allotment in favour of the petitioner. He submits although the petitioner disputes the contents of the said letter, according to the respondent no dispute survived for being referred to arbitration.

7. He submits that the disputes are pending before the Supreme Court (CA Nos. 1660/2018, 1746/2018, 1769/2018, 1770/2018) as well as in this Court in Company Petition No. 49/2016 and therefore the arbitral proceedings cannot proceed.

8. Insofar as the first contention is concerned, it is seen that the petitioner has admitted to accepting the allotment letter and therefore the appointment of the arbitrator made by invoking the arbitration clause in the allotment letter cannot be held to be *ex-facie* illegal. It is open for the petitioner to challenge the jurisdiction of the Arbitral Tribunal before the arbitral tribunal and this ground would also be available to the petitioner once an arbitral award, if any, is passed. However, at this stage it cannot be stated that the arbitrator appointed does not, *de jure*, have the mandate to conduct the arbitral proceedings.

9. The second contention that there was no occasion for the respondent to have invoked the arbitration clause and therefore the mandate of the arbitrator ought to be terminated is unmerited. The statement of claim filed by the respondent is not on record and it is thus not possible to examine the disputes sought to be raised by the respondent. Further, there is no reason to believe that the Arbitral Tribunal will not consider the petitioner's contention in this regard. This contention provides no ground for the petitioner to seek a declaration that the mandate of the arbitrator be terminated at this stage.

10. Insofar as the disputes under the Consumer Protection Act, 1986 are concerned, the National Consumer Disputes Redressal Commission has rejected the claims made by the Grand Venezia Buyer Association (of which the petitioner is a member) and the matter is pending before the Supreme

Court. This Court is informed that the Supreme Court has passed an interim order dated 05.02.2018 admitting the appeal preferred by the said Association and has directed that status quo be maintained with regard to the property in the meantime. Since the agreement between the parties includes an arbitration clause, the arbitral proceedings cannot be interdicted; However, the Arbitral Tribunal would take into account the orders passed by the Supreme Court as well as by this Court in Company Petitions while considering the claims made by the respondent. The scope of the present petition is limited to examine whether the mandate of the arbitrator is required to be terminated. In view of the above, this Court is unable to accept that such relief can be granted to the petitioner.

11. The petition is, accordingly, dismissed and pending application is also disposed of.

12. It is clarified that all contentions of the petitioner are left open

VIBHU BAKHRU, J

MAY 01, 2018

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