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

+ **ARB.P. 337/2018**

VASATHI HOUSING LIMITED

..... Petitioner

Through: Mr Y. Rajagopala Rao and Mr K.
Sharat Kumar, Advocates.

versus

**INDIABULLS DISTRIBUTION SERVICES
LIMITED**

..... Respondent

Through: Mr Dayan Krishnan, Sr. Advocate
with Mr Rudreshwar Singh, Mr
Gautam Singh and Ms Aakashi
Lodha, Advocates.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER

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07.05.2018

IA No.6167/2018

1. Allowed, subject to all just exceptions.

ARB.P. 337/2018 & IA No.6166/2018

2. The petitioner has filed the present petition under Section 11 of the Arbitration and Conciliation Act, 1996 (hereafter 'the Act'), *inter alia*, praying that a sole independent, acceptable arbitrator or an arbitral tribunal consisting of three arbitrators as provided under Clause 10.6 of the Escrow Agreement dated 25.01.2014 be appointed to decide the controversy/disputes between the petitioner and the respondent.

3. It is seen that the Escrow Agreement dated 25.01.2014 was entered into between three parties, namely, the petitioner, the respondent and YES Bank Ltd. The said agreement includes an arbitration clause, which is set

out below:-

“10.6 Arbitration

10.6.1 Any dispute arising out of or in connection with this Agreement (including a dispute regarding the existence validity or termination of this Agreement or the consequences of its nullity) between the Parties and which continues to be unresolved for 15 days shall be referred to and finally resolved by arbitration under the Arbitration and Conciliation Act, 1996.

10.6.2 The arbitration shall be conducted as follows:

- (a) The venue of arbitration shall be Delhi.
- (b) The Parties shall appoint a single arbitrator. In the event the Parties cannot agree upon an arbitrator, each Party shall appoint one arbitrator and the two appointed arbitrators shall appoint a third arbitrator, in case the dispute is between two Parties of this Agreement. However, in case the dispute is between all the Parties then each Party shall appoint one arbitrator. In the event the arbitrators are even in number the party appointed arbitrators shall jointly appoint the presiding arbitrator.”

4. Mr Dayan Krishnan, the learned senior counsel appearing for the respondent has opposed the present petition on two grounds: first, that Yes Bank Ltd is not a party to the present petition; and second, that the arbitration clause as contained in the Escrow Agreement has not been invoked by any party.

5. Mr Rao, the learned counsel appearing for the petitioner has referred

to the notice dated 03.10.2016 issued by the respondent, which sets out the claim as raised by the respondent. He also referred to the letter dated 09.01.2018 whereby the respondent had invoked the arbitration clause as contained in an agreement dated 25.01.2014 ('the main agreement') entered into between the petitioner and the respondent.

6. The petitioner had responded to the said notice dated 09.01.2018 and, thereafter, the respondent had proceeded to appoint an arbitrator in terms of the arbitration clause as contained in the main agreement dated 25.01.2014. The petitioner had sent a communication that the Arbitrator so appointed is not acceptable to the petitioner.

7. The learned counsel for the petitioner further states that the disputes sought to be raised by the respondent relate to Escrow Agreement and not the main agreement. He further states that the arbitral tribunal is required to be appointed in terms of the arbitration clause as contained in the Escrow Agreement. This, of course, is disputed by the respondent.

8. At this stage, it is not necessary to examine the disputes between the parties. However, it is apparent that none of the parties has invoked the arbitration clause as contained in the Escrow Agreement. Clearly, if either party invoked the said clause, the disputes falling within the scope of the arbitration clause as contained in the Escrow Agreement would have to be decided by an arbitral tribunal in a separate arbitral proceedings as the Yes Bank, which is a party to the Escrow Agreement is not a party to the main agreement. The two arbitration agreements – the clauses contained in an Escrow Agreement and the main agreement – are also materially different.

9. In view of the above, the present petition is dismissed leaving it open to either parties to invoke the arbitration clause under the Escrow Agreement in accordance with law, if necessary.

10. The application is also disposed of.

VIBHU BAKHRU, J

MAY 07, 2018
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