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IN THE HIGH COURT OF DELHI AT NEW DELHI

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ARB.P. 571s/2018

WANDERLUST TRAVELS PVT. LTD.

..... Petitioner

Through: Mr. Sanjeev Narula, Mr. Vinit Trehan
and Mr. Apar Chopra, Advs.

versus

DELHI TOURISM AND TRANSPORTATION DEVELOPMENT
CORPORATION LTD.

..... Respondent

Through: Mr. P.C. Sen, Sr. Adv with Ms. Puja
Dewan Seth, Adv.

CORAM:

HON'BLE MR. JUSTICE RAJIV SHAKDHER

ORDER

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27.09.2018

1. This is a petition filed under Section 11 (5) of the Arbitration and Conciliation Act, 1996 (in short '1996 Act'). The petitioner seeks appointment of an Arbitrator.

2. It is not in dispute that the respondent has taken recourse to the provisions of the Public Premises (Eviction of Unauthorized Occupants) Act, 1971 (in short '1971 Act'). The petitioner says that apart from its equipment, there is nothing else lying at the subject site. This aspect is affirmed by the learned counsel for the respondent. Learned counsel for the respondent says that since the equipment of the petitioner is lying at the subject site, the petitioner has, in fact, in constructive possession of the subject site.

3. I am also informed by the learned counsel for the parties that

the Estate Officer has, in fact, passed an eviction order against the petitioner on 10.09.2018. I am further informed by the learned counsel for the parties that the petitioner has taken recourse to an appeal, which is pending adjudication.

4. Mr. Narula, however, asserts that in the present action all that the petitioner wishes to claim via the arbitration route are losses in respect of investments made, business and damaged equipment.

4.1 Furthermore, Mr. Narula, on instructions, says that the petitioner cannot and does not intend to claim any damages, which fall within the realm of the 1971 Act.

5. In these circumstances, learned counsel for the parties are agreed that this Court could proceed to appoint an Arbitrator and that the arbitration proceedings would be conducted under the aegis of Delhi International Arbitration Centre (in short 'DIAC'). In other words, the rules and fees as stipulated by DIAC will apply to the instant proceedings.

6. Mr. Sen adds another caveat, other than those which are indicated above. The caveat being that insofar as the realm of the Arbitrator's jurisdiction is concerned, the respondent may wish to contest the same.

7. Having regard to the aforesaid, Hon'ble Ms. Justice Pratibha Rani, former Judge of this Court is appointed as an Arbitrator.

7.1 Furthermore, arbitration proceedings will be conducted under the aegis of DIAC. The fee and rules prescribed by the DIAC will apply to the instant proceedings as well.

7.2 The respondent, though, will be free to move an appropriate application under Section 16 of the 1996 Act with regard to the disputes which, according to it, cannot be subjected to arbitration.

7.3 Likewise, the petitioner will have liberty to move an appropriate application before the learned Arbitrator for removing its equipment which is lying on the subject site. The learned Arbitrator will consider appointing a Local Commissioner in that behalf.

8. Petition disposed of in the above terms.

9. Order *dasti*.

10. The Registry will dispatch a copy of this order to the learned Arbitrator as well Coordinator, DIAC.

RAJIV SHAKDHER, J

SEPTEMBER 27, 2018

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