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

+ ARB.P. 522/2018

KAMLESH GUPTA Petitioner

Through: Mr. A.K.Singla, Sr. Adv. with
Mr. Abhimanyu Singh Khatri &
Mr. Ankit Panwar, Advs.

versus

BHASIN INFOTECH & INFRASTRUCTURE PVT. LTD.

..... Respondent

Through: Mr. Sandeep Sharma with
Mr. Lokesh Bhola, Mr. Aman Dhyani,
Ms. Harshita Agarwal &
Mr. Sandeep Mandar, Advs.

CORAM:

HON'BLE MR. JUSTICE NAVIN CHAWLA

ORDER

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13.09.2018

The present petition has been filed under Section 11 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as the 'Act') seeking appointment of an Arbitrator for adjudicating the disputes that have arisen between the parties in relation to the Allotment Letter dated 01.04.2009 issued by the respondent in favour of the petitioner. The said Allotment Letter contains an Arbitration Agreement in form of Clause 44(b) thereof which is reproduced hereinbelow:-

“(b). All or any disputes arising out of or touching upon or in relation to the terms of this provisional Allotment Letter including the interpretation and validity of the terms thereof

and the respective rights and obligations of the parties shall be settled amicably by mutual discussion failing which the same shall be settled through arbitration. The arbitration proceedings shall be governed by the Arbitration and Conciliation Act 1996 or any statutory amendments/modifications thereof for the time being in force. The arbitrator shall be appointed by the company. The arbitration proceedings shall be held at an appropriate location in Delhi/New Delhi. The Courts at Delhi alone shall have jurisdiction in all matters arising out of/touching and/or in connection to this letter.”

Disputes having arisen between the parties, the petitioner invoked the Arbitration Agreement vide its notice dated 17th May, 2018. Having received no response, the present petition was filed.

At the initial stage, it was submitted by the counsel for the respondent that even before filing of the present petition, the respondent in exercise of the power vested in it under the Arbitration Agreement, appointed an Arbitrator vide letter dated 16th July, 2018. However, it is now admitted that the said letter was posted only on 20th July, 2018 i.e. after filing of the present petition.

In view of the above, it cannot be said that the appointment was made prior to the filing of the judgment of the Supreme Court in the present petition and in terms of the ***Datar Switchgears Ltd. v. Tata Finance Ltd. and another***, (2000) 8 Supreme Court Cases 151, this Court would have the jurisdiction to appoint an Arbitrator, as the respondent had failed to appoint an Arbitrator in terms of the Arbitration Agreement.

It is further contended by the learned counsel for the respondent that the Allotment Letter is not properly stamped and registered and

therefore cannot be admitted in evidence, without prejudice to this submission, as the respondent had already agreed to appoint an Arbitrator and in fact appointed one, respondent has no objection if an Arbitrator is appointed to adjudicate the disputes that have arisen between the parties in relation to the said Allotment Letter.

In view of the above, I appoint Mr. B.L.Garg, Retd. ADJ, Delhi (A-9, Ganpati Apartment, 6, Alipur Road, Civil Lines, Delhi-110054, Ph: 9810827815 & 23930896) as a Sole Arbitrator for adjudicating the disputes that have arisen between the parties in relation to the above Allotment Letter. The Arbitrator shall give a disclosure under Section 12 of the Act before proceeding with the reference.

All contentions of the respondent shall remain open in such arbitration proceedings, including the issue noted above.

The petition is disposed of in the above terms.

NAVIN CHAWLA, J

SEPTEMBER 13, 2018

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