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IN THE HIGH COURT OF DELHI AT NEW DELHI

+ ARB.P. 617/2018

JAIDEEP DEVELOPER & BUILDTECH PVT. LTD Petitioner

Through: Dr.Amit George, Mr.Nitesh Mehra,
Mr.Dheeraj Pandey and Mr.Rishabh
Dheer, Advs.

versus

SH. VINISH MITHAL & ORS. Respondents

Through: Mr.Vinish Mittal, R-1 in person for
himself and also for R-2.
Mr.Alok Mittal, R-3 in person.
Mr.Naveen Mittal, R-4 in person.

CORAM:

HON'BLE MR. JUSTICE NAVIN CHAWLA

ORDER

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26.11.2018

1. This petition has been filed by the petitioner 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 Collaboration Agreement dated December, 2014 executed between the parties.
2. The Agreement was executed by the respondent no.1 acting on his behalf as also on behalf of the respondent nos.2 to 4 on the basis of a Power of Attorney executed by the said respondents in favour of respondent no.1. Respondent no.1 had also relied upon the Award dated 12.04.2014 passed by the Lok Adalat, Delhi to authenticate his authorization to execute the said Agreement on behalf of the respondent nos.2 to 4.

3. The said Collaboration Agreement contained an Arbitration Agreement in form of Clause 31 thereof.

4. The disputes having arisen between the parties, the petitioner invoked the Arbitration Agreement vide its notice dated 13.07.2018. The respondent nos.3 and 4 by their reply dated NIL denied the existence of any Agreement between the said respondents and the petitioner. They further asserted that the construction was to be carried out by the respondent no.1 out of his own personal funds. Other pleas were also taken by them in their denial to appoint an Arbitrator.

5. On filing of the present petition, the respondent no.1, appearing in person and on behalf of the respondent no.2, gave no objection to the appointment of an Arbitrator. The respondent nos.3 and 4, who appeared in person on 28.09.2018, objected to the appointment of an Arbitrator. In spite of opportunity being granted, they have not filed any reply to the present petition.

6. Respondent nos.3 and 4 are present in person. They submit that the respondent no.1 was to construct the building out of his own funds and no liability can be fastened for that amount on respondent nos.3 and 4. However, they did not deny the existence of the Power of Attorney in favour of the respondent no.1. The said Power of Attorney clearly authorises the respondent no.1 to erect the building after demolishing the same and to appoint a contractor for this purpose. The petitioner claims himself to be a contractor for this job and does not claim any right in the property.

7. From the submissions made by the respondent nos.3 and 4 itself, it is apparent that there is a dispute between the respondent no.1 on the one hand and respondent nos.3 and 4 on the other. However, the same cannot in any

manner defeat the rights of the petitioner to claim its rights under the Agreement to be adjudicated through arbitration. In any case, the respondent nos.3 and 4 shall be free to raise all their defence before the Arbitrator.

8. In view of the above, I appoint **Ms.Bimla Makin**, Retd. District and Sessions Judge, Delhi (C-47, Bali Nagar, New Delhi- 110015 Ph: 9910384624) as a Sole Arbitrator for adjudicating the disputes that have arisen in relation to the abovementioned Agreement. The Arbitrator shall give disclosure in terms of Section 12 of the Act before proceeding with the references.

9. All the claims and counter claims of either party shall remain open before the Arbitrator.

10. Counsel for the petitioner submits that the Agreement between the parties in Clause 31 thereof provides an unreasonable time frame for completion of the arbitration proceedings.

11. In my view, this question cannot be determined while exercising the jurisdiction under Section 11 of the Act. The Arbitrator shall be free to decide on the said issue upon hearing the parties. All the claims and counter claim of either party shall remain open before the Arbitrator.

12. The petition is allowed in the above terms, with no order as to cost.

Dasti.

NAVIN CHAWLA, J

NOVEMBER 26, 2018/Arya