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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **CS(COMM) 1406/2016**
BUCON INFRATECH PVT. LTD. Plaintiff
Through: Mr. Raman Kapur, Sr. Adv.,
Mr. Dhiraj Sachdeva, Advs.

versus

RUDRA BUILDWELL REALTY PRIVATE LTD..... Defendant
Through: Mr. Akshat Gupta, Adv.

CORAM:
HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

% **22.03.2018**

IA No. 2355/2017 (of the defendant u/S 8 of the Arbitration Act)

1. The senior counsel for the plaintiff appears on advance notice.
2. The counsel for the applicant/defendant and the senior counsel for the plaintiff have been heard.
3. After the conclusion of hearing, the senior counsel for the plaintiff, under instructions, states that the application be allowed and the parties be referred to Arbitration in terms of the arbitration clause at pages 120-121 of the application of the defendant under Section 8 of the Arbitration and Conciliation Act, 1996. The senior counsel for the plaintiff, however, states that instead of the arbitration being of three arbitrators as provided in the contract, a sole arbitrator be appointed.
4. The counsel for the defendant/ applicant states that he has no instructions.

5. Even otherwise, Supreme Court recently in ***Kerala State Electricity Board Vs. Kurien E. Kalathil*** 2018 SCC OnLine SC 202 has reiterated that the Court cannot, on the statements of the counsels, modify the arbitration clause or pass any orders.
6. In this view of the matter, it is not deemed appropriate to, on the oral statements of the counsels, interfere with the arbitration agreement between the parties. Liberty is, however, given to the parties to, if so desire, apply to this Court along with signed agreement of the parties for modification, if any required in the arbitration clause.
7. IA No. 2355/2017 is allowed.
8. The suit is disposed of by restraining the parties to Arbitration.
9. On request of the counsel for the plaintiff, a certificate is ordered to be issued for refund of 95% of the court fees paid by the plaintiff on the suit. The said certificate be handed over to the counsel for the plaintiff.

RAJIV SAHAI ENDLAW, J

MARCH 22, 2018

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