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IN THE HIGH COURT OF DELHI AT NEW DELHI

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ARB.P. 695/2018 & IA 12512/2018

SOHAN BAHADUR GURONG

..... Petitioner

Through: Mr.Rajesh Yadav, Mr.Udayan
Khandelwal, Advs.

versus

ANAND DIVINE DEVELOPERS PVT. LTD. Respondent

Through: Mr.K.Nayar, Mr.Sarthak Malhotra,
Advs.

CORAM:

HON'BLE MR. JUSTICE NAVIN CHAWLA

ORDER

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12.10.2018

1. This petition under Section 11 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as the 'Act') has been filed by the petitioner seeking appointment of an Arbitrator for adjudicating the disputes that have arisen between the parties in relation to the Memorandum of Understanding dated 08.05.2014 executed between the parties.

2. The said MOU contains an Arbitration Agreement in form of Clause 12 thereof, which is reproduced as under:

“12. In the event of any difference or dispute between the parties hereto with respect to this Memorandum of Understanding, the same shall be referred to sole arbitrator mutually appointed by the parties in accordance with the provisions of the Arbitration and Conciliation Act, 1996 or any re-enactment or modification thereto. Such arbitration shall be held in New Delhi. This Memorandum of Understanding is subject to the jurisdiction of the Courts of New Delhi.”

3. Disputes having arisen between the parties, the petitioner invoked the Arbitration Agreement vide its letter dated 21.07.2018. The respondent by its reply dated 21.08.2018 referred to the Buyer's Agreement dated 08.05.2014 also executed between the parties and stated that they are in the process of appointing an Arbitrator for adjudicating the disputes that have arisen between the parties in relation to the Buyer's Agreement.

4. By a subsequent letter dated 22.08.2018, the respondent conveyed its decision on appointment of a Sole Arbitrator for adjudicating the disputes, however, only under Buyer's Agreement. I may only note here that in terms of the Arbitration Agreement between the parties in the Buyer's Agreement, the respondent was given the power to appoint a Sole Arbitrator, as opposed to the Arbitration Agreement contained in the MOU, which provides for a Sole Arbitrator to be appointed with mutual consent.

5. The Arbitrator appointed by the respondent for the Buyer's Agreement has entered reference and I am informed that the Arbitrator has also conducted the Arbitration proceeding.

6. As the existence of the Arbitration Agreement in the MOU dated 08.05.2014 and also due invocation thereof by the petitioner is not denied by the respondent, I see no impediment in appointing a Sole Arbitrator for adjudicating the disputes that have arisen between the parties in relation to the said MOU.

7. As a Retired Judge of this Court has already been appointed for adjudicating the disputes between the parties in relation to the Buyer's Agreement and the two Agreements are clearly interconnected with

each other, I deem it appropriate, with the consent of the counsel for the petitioner, to appoint the same Arbitrator for adjudicating the disputes that have arisen between the parties in relation to the MOU as well.

8. I accordingly appoint **Justice H.R.Malhotra**, (Retd.) former Judge of the Delhi High Court, Address: 271, Forest Lane, Cross Lane-2, Sainik Farms, New Delhi-110068, Mobile-9311510400, as the Sole Arbitrator for adjudicating the disputes that have arisen between the parties in relation to the said MOU. The Arbitrator shall give disclosure under Section 12 of the Act before proceeding with the reference.

9. The petition is allowed in the above terms with no order as to costs.

NAVIN CHAWLA, J

OCTOBER 12, 2018
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