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

+ **ARB.P. 524/2017**

BHAWNA SALUJA

..... Petitioner

Through Mr K.K. Malhotra, Mr C.P. Puri,
Advocates.

versus

MUNISH KUMAR GUPTA & ANR.

..... Respondents

Through Mr Sumit Chander, Mr Jatin Choudhary,
Advocates for R1.

Mr B.B. Gupta, Senior Advocate with Mr Jai
Sahai endlaw, Advocate and Mr Apoorv Gupta,
Advocates for R2.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER

% **15.03.2018**

1. The petitioner has filed the present petition under Section 11 of the Arbitration and Conciliation Act, 1996 (hereafter 'the Act'), *inter alia*, praying that an arbitrator be appointed to adjudicate the disputes that have arisen between the parties in relation to an agreement to sell and purchase dated 01.11.2016 (hereafter 'the Agreement'). The Agreement includes an arbitration clause, which is set out below:-

“8. That in case of any dispute, difference or claim arising out of this Agreement, the same shall be referred to Arbitrator by a Sole Arbitrator under the provision of Arbitration & Conciliation Act, 1996.”

2. The learned counsel appearing for respondent no.1 states that there is no dispute as to the existence of an arbitration agreement (clause) between

the petitioner and respondent no.1. Further, there is also no dispute that the said clause was invoked by the petitioner by a letter dated 21.03.2017.

3. This petition was listed for hearing on 23.02.2018 before this Court, and the learned counsel for the petitioner and respondent no.1 had contended that the parties were desirous for settling the disputes amicably. Accordingly, at their request, the said parties were referred to Delhi High Court Mediation and Conciliation Centre (DHCMCC) and the matter was listed today.

4. The learned counsel appearing for the petitioner and respondent no.1 state that the talks of an amicable settlement are still inconclusive.

5. Since, there is no dispute as to the existence of the arbitration agreement, this Court is of the view that the petition is liable to be allowed.

6. Accordingly, with the consent of the petitioner and respondent no.1, it is directed that an Arbitrator be appointed by Delhi International Arbitration Centre (DIAC). The Arbitration shall be conducted under the aegis of DIAC and in accordance with its rules.

7. The said parties (the petitioner and respondent no.1) are directed to appear before the Coordinator, DIAC for further proceedings on 18.05.2018 at 11.00 a.m.

8. In the meanwhile, the petitioner and respondent no.1 may continue their endeavours to settle the said disputes before DHCMCC. In the event, the parties succeed in resolving the said disputes prior to 18.05.2018, they shall communicate the same to the Coordinator, DIAC and he would not be required to take any further steps in the matter. However, if the parties fail to

resolve the said disputes, the parties shall appear before the Coordinator, DIAC as directed.

9. It is seen that the Agreement was entered into between the petitioner and respondent no.1. Respondent no.2 was not a party to the Agreement and, therefore, an arbitration agreement does not exist between the petitioner and respondent no.2. Consequently, respondent no.2 cannot be referred to arbitration. The petitioner would be at liberty to take such appropriate proceedings against respondent no.2 as may be advised.

10. The petition is disposed of in the above terms.

VIBHU BAKHRU, J

MARCH 15, 2018

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