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

+ **ARB.P. 608/2017**

VIC ENTERPRISES LTD

..... Petitioner

Through: Mr Sudhir K.Makkar, Senior
Advocate with Ms Meenakshi Singh,
Ms Saumya Gupta, Ms Ridhi Munjal
and Mr Sudhanshu Suman,
Advocates.

versus

V R PROCUREMENT CORPORATION LTD

..... Respondent

Through: Mr Siddharth Bhatli, Mr Rakshith
Srivastava, Ms Sakshi Khattar and Ms
Purvi Singh, Advocates.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER

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10.04.2018

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 had arisen in relation to the 'Agreement to Sell' dated 12.09.2014 (hereafter 'the Agreement'). The Agreement includes an arbitration clause, which is set out below:-

“17) That in case of any dispute between the parties, same shall be referred for arbitration to the Arbitrator, who shall be appointed by the parties jointly. The language for arbitration shall be English and the venue shall be Delhi. The costs of arbitration including Arbitrator's fee shall be borne jointly by the parties. The proceedings shall be governed by the Arbitration & Conciliation Act, 1996.”

2. The petitioner states that the notice dated 23.08.2017 was issued to the respondent invoking the afore-mentioned arbitration clause. However, the respondent has not responded to the said notice.

3. The learned counsel appearing for the respondent contends that the Agreement would become effective only upon a default on the part of the respondent to perform its obligations under a separate agreement captioned as 'Financial Assistance Agreement', which was entered into between the parties on 12.09.2014. He stated that the said agreement contemplated a default notice before taking any further steps. However, no default notice was served on the respondent.

4. The aforesaid contentions are disputed by the learned counsel appearing for the petitioner.

5. At this stage, this Court is not called upon to examine the rival contentions on merit of the disputes between the parties. There is no dispute that the parties had entered into the Agreement and, thus, the arbitration clause (arbitration agreement) included in the Agreement is not disputed. It is well settled that the arbitration clause embodies an arbitration agreement, which is separate from the main agreement. Thus, notwithstanding the petitioner's contention that the Agreement is not effective at this stage, the said dispute would also be a subject matter of arbitration.

6. In view of the above, this Court is in the opinion that an arbitrator is required to be appointed to adjudicate the disputes between the parties. With the consent of the parties, Ms Indermeet Kaur (Retired), former Judge of the Delhi High Court (Phone No. 23382128) is appointed as the Sole Arbitrator

to adjudicate the disputes between the parties that fall within the scope of the arbitration clause as contained in the Agreement. This is subject to the Arbitrator making the necessary disclosure under Section 12 of the Act and not being ineligible under section 12(5) of the Act. The Arbitrator shall fix her fee in consultation with the parties and having regard to Schedule IV of the Act.

7. The learned counsel appearing for the respondent has also disclosed that the said arbitrator has also been appointed to adjudicate certain other disputes that have arisen between the respondent and other parties. However, notwithstanding the same, the petitioner concurs with the appointment of Justice Indermeet Kaur (Retired) as an arbitrator.

8. The parties are at liberty to approach the Arbitrator for further proceedings.

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

VIBHU BAKHRU, J

APRIL 10, 2018
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