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* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ ARB.P. 629/2017

ENARCH CONSULTANTS PVT.LTD. Petitioner
Through: Mr.Udit Seth, Adv.

versus

LALJI SUPERSPECIALITY HOSPITAL & RESEARCH CENTER
GORAKHPUR PVT.LTD. Respondent
Through: Mr.Rakesh Taneja, Adv.

CORAM:
HON'BLE MR. JUSTICE NAVIN CHAWLA

ORDER
% **05.02.2018**

This petition under Section 11 of the Arbitration & 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 agreement dated 15.01.2016.

The agreement contains an Arbitration Agreement in form of the following clause:

“Arbitration:

All disputes or differences which may arise between the Client and the Consultants under "Conditions of Engagement and Scale of Charges" with regard to the meaning or interpretation of matter or things done or to be done in pursuance hereof, such disputes and differences shall be referred for arbitration to the Council of Architecture. The arbitrator shall be appointed by the President, Council of Architecture. The arbitration shall be conducted as per the provisions of the Arbitration and Conciliation Act, 1996. The decision and

award of the arbitrator shall be final and binding on the Consultants and the Client”.

The disputes having arisen between the parties, the petitioner had invoked the Arbitration Agreement vide notice dated 10.05.2017 addressed to the respondent. The respondent vide its reply/notice dated 22.05.2017 denied the claim made by the petitioner.

The petitioner vide notice dated 21.06.2017 requested the appointing authority i.e. President, Council of Architecture to appoint an Arbitrator in terms of the Arbitration Agreement between the parties. Having received no response and the Arbitrator not being appointed by the Appointing Authority, the present petition was filed by the petitioner.

Upon notice being issued of the present petition, the respondent has filed its reply. It is submitted by the learned counsel for the respondent that claims raised by the petitioner would fall within the category of ‘excepted matter’ in terms of the Agreement. In my view, this cannot be a ground for refusing to appoint an Arbitrator. In terms of Section 11 (6)(A) of the Act, this Court has to confine its examination only to the question of existence of an Arbitration Agreement. The Arbitration Agreement having not been disputed by the respondent, whether a particular claim that may be raised by the petitioner before the Arbitral Tribunal would fall within the category of ‘excepted matter’ not covered by the Arbitration Agreement, would be a question to be determined by the Arbitral Tribunal itself, may be as a preliminary issue.

With the consent of the parties, I appoint Justice Anil Kumar (Retd.), B-33, Panchsheel Enclave, New Delhi-110017, Mob. No.9818000140 as a

Sole Arbitrator to adjudicate the disputes that have arisen between the parties. The Arbitrator shall file his disclosure in terms of Section 12 of the Act before proceeding with the arbitration. The Arbitrator would charge the fee as prescribed in the Fourth Schedule 4th of the Act.

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

Dasti.

NAVIN CHAWLA, J

FEBRUARY 05, 2018/Arya