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

\+ ARB.P. 650/2017

CLAYGROUND COMMUNICATIONS PVT. LTD. ..... Petitioner

Through: Mr Sanjiv Kakra, Advocate.

versus

IMPERIA STRUCTURES LTD. & ORS. ..... Respondents

Through: Mr Tarun Singh, Advocate.

CORAM:
HON'BLE MR. JUSTICE VIBHU BAKHRU

O R D E R

% 21.02.2018

IA No. 11942/2017

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 are stated to have arisen in connection with the agreement dated 15.08.2015 (hereafter 'the Agreement') executed between the concerned parties.

2. The said agreement includes an arbitration clause, which is set out below:-

> "10.10 **Arbitration**
>
> i. The disputes and differences that may arise between the Parties hereto in respect of any of the covenants of this Agreement or any interpretation thereof shall be resolved by arbitration in accordance with the provisions of the Arbitration and Conciliation Act, 1996.
>
> ii. The Arbitration shall be held in New Delhi.

iii. The governing laws shall be the laws prevailing in India."

3. It is not disputed that the petitioner had invoked the arbitration clause by a notice dated 21.04.2017 addressed to respondent no.1.

4. The learned counsel appearing for respondents has resisted the present petition on two grounds. First, he submits that there is no arbitration agreement between the petitioner and respondent nos. 2 to 4. He points out that the Agreement was executed only between the petitioner and respondent no.1 and, therefore, respondent nos. 2 to 4 cannot be referred to arbitration. Second, he submits that the claims made by the petitioner are for the period beyond the term of the Agreement and, therefore, are not sustainable.

5. The contention that there is no arbitration agreement between the petitioner and respondent nos. 2 to 4 is merited. A plain reading of the Agreement indicates that the same was entered into only between two parties. The Agreement is also signed on behalf of the said two parties, namely, the petitioner and respondent no.1.

6. In this view, an arbitrator cannot be appointed to adjudicate any disputes that may have arisen between the petitioner and respondent nos.2 to 4.

7. Insofar as the second contention is concerned − that is, the claim made by the petitioner is for a period beyond the term of the Agreement − the same is clearly a matter to be considered by the arbitrator. The question whether the claims made by the petitioner are sustainable or not cannot be examined by this Court in this petition.

8. In view of the above, this Court is of the view that an Arbitral Tribunal is required to be constituted for adjudicating the disputes between the petitioner and respondent no.1.

9. At this stage, the learned counsel appearing for the parties request that the matter be referred to Delhi International Arbitration Centre (DIAC). The learned counsel appearing for the respondent further requests that a former judge (and not an advocate or any other professional) be appointed as a sole arbitrator.

10. In view of the above, it is directed that a former judge be appointed as an arbitrator under the Rules of the DIAC. The arbitration shall be conducted under the aegis of DIAC and in accordance with its Rules.

11. The representatives of the parties shall appear before the Co-ordinator, DIAC on 28.02.2018 at 02:30 PM.

12. The petition is disposed of with the aforesaid terms.

VIBHU BAKHRU, J

FEBRUARY 21, 2018
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