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

+ **ARB.P. 685/2017**

JINDAL SAW LIMITED

..... Petitioner

Through: Mr.P.K. Mittal, Adv.

versus

M.A. ZAHID

..... Respondent

Through: Mr.Amit A. Pai & Mr.Rahat Bansal,
Adv.

CORAM:

HON'BLE MR. JUSTICE NAVIN CHAWLA

ORDER

% **20.03.2018**

This petition under Section 11 of the Arbitration and Conciliation Act, 1996 has been filed by the petitioner seeking appointment of a Sole Arbitrator for adjudicating the disputes that have arisen between the parties in relation to the Settlement Agreement dated 22.07.2013 executed between the parties. The Deed of Settlement contains an Arbitration Agreement in form of Clause 11, which is reproduced herein below:-

“11. That in case of any disputes or differences arising out of or touching upon or concerning this Agreement shall be referred to the Sole Arbitration of Shri HS Chaudhry, Director of M/s Jindal Saw Limited or any other person, who may be nominated by him and the decision of the Sole Arbitrator shall be final, conclusive and binding upon both the parties. The Place of Arbitration proceedings shall be at New Delhi. The Courts at New Delhi alone shall have the jurisdiction to try and decide the dispute.”

Disputes having arisen between the parties, the same were referred to the named Arbitrator, however, the named Arbitrator in the present case

being the Director of the petitioner company, was objected to by the respondent vide its reply dated 07.06.2016. In view of such objection, the petitioner appointed another Arbitrator, but vide its order dated 22.09.2017 the Sole Arbitrator upheld the objection of the respondent on the constitution of the Tribunal relying upon the judgment of the Supreme Court in ***TRF Ltd. vs. Energo Engineering Projects Ltd.***, (2017) 8 SCC 377.

In view of the above, the present petition has been filed by the petitioner.

The counsel for the respondent, relying upon Clause(s) 3 to 6 of the Deed of Settlement, contends that no dispute can be said to have arisen between the parties as on today, inasmuch as, the petitioner does not allege that the order of attachment of the bank accounts or property of the respondent has been vacated. He submits that in the absence of such an averment, the parties cannot be referred to arbitration.

I am unable to agree with the above submission of the respondent. In terms of Section 11(6A) of the Arbitration and Conciliation Act, 1996 as amended by the Amendment Act of 2015, the examination of this Court, on an application under Section 11 of the Act, is confined only to the question of existence or otherwise of an Arbitration Agreement. The existence of the Arbitration Agreement has not been denied by the respondent. Whether the claim of the petitioner is maintainable or is premature, has to be necessarily decided by the Arbitrator on the basis of the Statement of Claim and other pleadings filed before him and not by this Court while exercising its power under Section 11 of the Act. I, therefore, find no merit in the objection raised by the counsel for the respondent.

The counsel for the respondent suggests that, without prejudice to its

rights and contentions, it would be agreeable if the parties are referred to the Delhi International Arbitration Centre (hereinafter referred to as 'DIAC') for the appointment of an Arbitrator. The counsel for the petitioner has no objection to this course being adopted.

I accordingly direct the parties to appear before DIAC on 9th April, 2018 at 2:00 p.m. DIAC shall appoint a Sole Arbitrator for adjudicating the disputes that have arisen between the parties in relation to the Deed of Settlement referred above. The arbitration and the fee shall be governed by the DIAC Rules.

The petition is disposed of with the above directions and with no order as to costs.

NAVIN CHAWLA, J

MARCH 20, 2018/rv