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IN THE HIGH COURT OF DELHI AT NEW DELHI

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ARB.P. 727/2017

R.K. ASSOCIATES

..... Petitioner

Through: Mr. Shrey Chathly, Adv

versus

SANJEEV KUMAR MALHOTRA & ORS. Respondents

Through: Mr. P.S. Mehandru, Adv for
respondent no. 1

Mr. Harish Katyal with Ms. Pratyasha
Kunj, Advs for respondent no. 11&12

CORAM:

HON'BLE MR. JUSTICE RAJIV SHAKDHER

ORDER

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23.08.2018

1. The record shows that this is the second round of litigation.
2. The first round of litigation ended with an award dated 11.04.2006, being rendered, which was challenged by the petitioner herein via OMP bearing no. 326/2006.
3. The learned Single Judge, it appears, had partially set aside the award. The petitioner, however, carried the matter in appeal.
4. The Division Bench via its judgment dated 9.2.2017 allowed the appeal i.e. FAO(OS) No.18/2013 and set aside the judgment of the learned Single Judge. While doing so, the Division Bench passed the following operative directions:-

*“....The learned counsel for the parties are agreed
that this matter would have to be resolved through*

arbitration. The learned counsel for the appellant states that he would invoke the arbitration clause within a week in order to have the issues with regard to the damages and specific performance resolve. If the respondents have a counter claim they would also make the same before the learned Arbitrator.

The appeal stands disposed of in the above terms. CM 12307/2014 is also disposed of as it does not survive. All pending applications also stand disposed of.....”

5. Consequent thereto, the petitioner issued a notice dated 12.02.2017 for appointment of an Arbitrator. Since, there was no movement in the matter, the petitioner preferred the captioned petition.

6. The record shows that pursuant to the notice being issued in the captioned Arbitration Petition, respondent no. 2 to 5 and 7 to 9, despite being served, did not enter appearance.

6.1 Consequently, vide order dated 19.01.2018, the said respondents were proceeded *ex parte*.

6.2 Insofar as, respondent no. 10 is concerned, it appears that the said respondent has expired.

6.3 I am told that the only legal representative of respondent no.10 is respondent no.9, who, is, as indicated above, already proceeded *ex parte*.

6.4. Respondent no. 11 and 12 are represented by Mr. Harish

Katyal, Adv.

6.5. Furthermore, insofar as respondent no. 6 to 8 are concerned, they have already been served, *albeit*, via publication.

6.6 There is though, no representation on behalf of respondent no. 6 to 8. Accordingly, the said respondents are also proceeded *ex parte*.

7. Resultantly, as agreed by the counsel for the petitioner and Mr. Harish Katyal, who, appears for respondent no. 11 and 12, the captioned petition is disposed of with the following directions:-

(i) Hon'ble Mr. Justice K. Ramamoorthy, Former Judge of this Court, is appointed as an Arbitrator in the matter.

(ii) The rules and fee schedule as applicable to the arbitration proceedings conducted under the aegis of the Delhi International Arbitration Centre will also apply to the instant arbitration proceedings.

(iii) The initial time frame for concluding the arbitration proceedings will not exceed a period of 12 months from the date when the learned Arbitrator enters upon reference.

(iv) In case time is required to be extended, the same will be extended only by mutual consent of parties or upon a direction being issued by the Court in that behalf.

AUGUST 23, 2018

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RAJIV SHAKDHER, J

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