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

+ **ARB.P. 766/2017**

MOHD. JAMSHED

..... Petitioner

Through Mr F. Hasan, Mr Ali Anwar, Mr Varun
Kapur, Advocates.

versus

MARIA JAMAL, & ORS.

..... Respondents

Through Mr Lalit Kumar Jha, Advocate for
Respondent No. 1 & 2.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER

% **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 have arisen between the parties in relation to a Collaboration Agreement dated 01.05.2017 (hereafter 'the Agreement'). The Agreement includes an arbitration clause which is set out below :-

“14. That in case of any dispute between the owner and the builder regarding the interpretation of these presents documents rights, duties, obligation, account etc. the same shall be referred to arbitration of a person mutually acceptable by both the parties whose decision shall be final and binding on them.”

2. In view of the disputes that have arisen between the parties, the petitioner caused a notice dated 11.10.2017 to be sent to the respondents,

inter alia, suggesting the name of Mr G.P. Thareja, a former Judge (ADJ) to be appointed as an arbitrator to adjudicate the disputes between the parties. The respondents responded to the said notice by disputing the claims made by the petitioner and further suggesting the name of another person (Sh. R.B. Arora, Advocate) to be appointed as an arbitrator. Since the same was not acceptable to the petitioner, the petitioner has filed the present petition.

3. The learned counsel appearing for the respondents does not dispute the existence of the arbitration agreement. He, however, states that the scope of the arbitration agreement is, *inter alia*, limited only to interpretation of the documents and, therefore, none of the claims raised by the petitioner falls within the scope of the arbitration clause. He further contends that the object of the Agreement is illegal, since it contemplates building of a house “without MCD Map” and, therefore, the arbitration agreement is also invalid.

4. This Court is not persuaded to accept any of the contentions as raised by the respondents. A plain reading of the arbitration clause indicates that the scope of the disputes covered under the clause is much wider than mere interpretation of the documents. The same also includes disputes regarding rights, duties and obligations of the parties. Further, the question whether the disputes are arbitrable or fall outside the scope of the arbitration clause is not required to be examined at this stage. Since, the arbitration clause is not disputed an arbitrator is required to be appointed to adjudicate the disputes falling within the arbitration clause.

5. The contention that the entire Agreement is illegal, also, cannot be readily accepted. In any event, the issue whether the clause that requires the

property to be constructed without MCD map is a valid clause and if not, whether the said clause can be severed from the Agreement, is an issue to be considered by the Arbitral Tribunal.

6. In this view, Mr. S.K. Tandon, Retd. ADJ, Delhi (Mobile No.: 9811719888) is appointed as an arbitrator to adjudicate the disputes between the parties. 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 the arbitral fees in consultation with the learned counsel for the parties and having regard to Schedule IV of the Act.

7. The parties are at liberty to approach the arbitrator for further proceedings.

8. The question whether respondent no.3 is a party to the Agreement is also left for the arbitral tribunal to decide in the first instance.

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

VIBHU BAKHRU, J

APRIL 10, 2018

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