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IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of decision: 3rd May, 2018

+ ARB.P. 772/2017

SAIRA BANO

..... Petitioner

Through: Mr.Tanveer Ahmad, Adv.

versus

ABRAR AHMED & ANR.

..... Respondents

Through: Mr.Mrinal Beri, Adv. for R-1 along with
R-1 in person.

Mr.S.Raza, Mr.Takrim Khan, Adv. for R-2

CORAM:

HON'BLE MR. JUSTICE NAVIN CHAWLA

NAVIN CHAWLA, J. (Oral)

1. This petition under Section 11 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as the 'Act') has been filed by the petitioner seeking appointment of an Arbitrator to adjudicate the disputes that have arisen between the parties in relation to the Collaboration Agreement dated 1st March, 2011. The said Collaboration Agreement has been executed between the petitioner and respondent no.1 and contains an Arbitration Agreement in form of clause 15 thereof, which is reproduced hereinbelow:-

15. That in case of any dispute between the Owner/First Party and the Second Party 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. As certain disputes arose between the parties, the petitioner invoked the Arbitration Agreement vide its notice dated 4th May, 2017. The respondent no.2 by its reply dated 24th May, 2017 *inter alia* contended therein that the Collaboration Agreement between the petitioner and respondent no.1 was dated 1st June, 2011 and in terms thereof, the Fourth Floor along with terrace rights of the property bearing Plot No.K.-65, admeasuring 130 sq. yards, Khasra No.292 situated at Batla House, Jamia Nagar, Okhla, New Delhi-110025 fell in the share of the respondent no.1 who had subsequently transferred the same to respondent no.2.

3. As the request for appointment of an Arbitrator was not acceded to, the present petition was filed by the petitioner.

4. Counsels for the respondents submitted that the Collaboration Agreement dated 1st March, 2011 is no longer in force and has been substituted by the Collaboration Agreement dated 1st June, 2011. They, however, do not deny the execution of the Collaboration Agreement dated 1st March, 2011. Counsel for the respondent no.2 further submits that when respondent no.2 purchased the property, he was only supplied a copy of the Collaboration Agreement dated 1st June, 2011 by the respondent no.1.

5. Counsel for the petitioner, on the other hand, denies the execution of the Collaboration Agreement dated 1st June, 2011 and

claims that the same is a forged and fabricated document.

6. Be that as it may, as the execution of the Collaboration Agreement dated 1st March, 2011 is not denied by respondent no.1, I see no impediment in appointing an Arbitrator for adjudicating the disputes that have arisen between the parties in relation thereto. It will always be open to the respondents to contend in such arbitration proceedings that the Collaboration Agreement dated 1st March, 2011 has been substituted by the Collaboration Agreement dated 1st June, 2011 and this submission, if raised, would be dealt with by the arbitrator upon receiving evidence of the parties.

7. Counsel for the respondent no.2 further submits that he is not a signatory to the Agreement dated 1st March, 2011 or 1st June, 2011 and he is neither a necessary nor a proper party to the arbitration proceedings, therefore, he cannot be referred to arbitration. In this regard, he relies upon the judgment of the Supreme Court in ***Deutsche Post Bank Home Finance Ltd. vs. Taduri Sridhar & Anr.*** AIR 2011 SC 1899.

8. I am unable to agree with the said submission of the counsel for respondent no.2. Admittedly, the respondent no.2 has purchased the rights to the property from respondent no.1 and, therefore, is an assignee of respondent no.1's share in the property, which respondent no.1 acquired under the Collaboration Agreement (whether dated 1st March, 2011 or 1st June, 2011). As an assignee of such rights therefore, the respondent no.2 would be a necessary and proper party to such arbitration proceedings. In ***Chloro Controls India Pvt. Ltd. vs. Severn Trent Water Purification Inc. & Ors.*** (2013) 1 SCC 641,

the Supreme Court has considered such situations and has held that an assignee can also be referred to arbitration.

9. In view of the above and with the consent of the parties, the parties are referred to the Delhi International Arbitration Centre (DIAC), which shall appoint a Sole Arbitrator for adjudicating the disputes that have arisen between the parties. The arbitration and the fee shall be governed by the DIAC Rules. The parties shall appear before the DIAC on 23rd May, 2018 at 2.00 p.m.

10. The petition is disposed of with above direction with no order as to costs.

NAVIN CHAWLA, J

MAY 03, 2018

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