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

+ ARB.P. 789/2017 & IA No.1809/2018

APPLAUSE HOSPITALITY PVT. LTD

& ANR.

..... Petitioners

Through: Ms Leena Tuteja, Advocate.

versus

NEW DELHI MUNICIPAL COUNCIL

..... Respondent

Through: Mr Vivek Aggarwal, Standing
Counsel for NDMC with Mr
Gurmehar Sistani, Advocate for
NDMC.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER

% **16.03.2018**

1. The petitioners have filed the present petition under Section 11 of the Arbitration and Conciliation Act, 1996 (hereafter 'the Act'), *inter alia*, praying as under:-

“a. appoint Nominee Arbitrator of the Respondent so that both the Arbitrators may appoint third Arbitrator for constitution of Arbitral Tribunal in accordance with Clause 11(2) (a) of the Concession Agreement to resolve/adjudicate upon the disputes/claims between the parties;

OR

b. alternatively appoint a Sole Arbitrator to resolve the disputes between the parties under the Concession Agreement dated 28.10.2009 entered into between the parties hereto.”

2. The petitioners have made its prayer for appointment of an Arbitrator in the context of the disputes that are stated to have arisen between the parties in connection with Concession Agreement dated 28.10.2009 entered into between the parties (hereafter 'the Agreement'). The agreement contains an arbitration clause, which reads as under:-

“11.2 Arbitration

(a) Procedure

Subject to the provisions of Article 11.1, any Dispute which is not resolved amicably shall be finally settled by binding arbitration under the Arbitration Act. The arbitration shall be by a panel of three arbitrators, one to be appointed by each Party and the third to be appointed by the two arbitrators approved by the Parties. The Party requiring arbitration shall appoint an arbitrator in writing, inform the other Party about such appointment and call upon the other Party to appoint its arbitrator. If within thirty (30) days of receipt of such intimation the other Party fails to appoint its arbitrator, the Party seeking appointment of arbitrator may take further steps in accordance with Arbitration Act.

(b) Place of Arbitration

The place of arbitration shall be New Delhi only.”

3. The petitioners state that they have already appointed an arbitrator. However, the respondent has failed to nominate an arbitrator and this led the petitioners to file the present petition. The learned counsel appearing for the parties are agreeable that instead of a Tribunal of three Arbitrators, a Sole Arbitrator be appointed to adjudicate the disputes between the parties. The parties are also agreeable that the arbitration be conducted under the aegis of Delhi International Arbitration Centre (DIAC).

4. With the consent of the parties, Justice B.D. Ahmed (Retired), former Chief Justice of Jammu and Kashmir High Court, is appointed as a Sole Arbitrator to adjudicate the disputes that are stated to have arisen between the parties in relation to the Agreement. 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.
5. The Arbitrator shall fix his fee in consultation with the learned counsel for the parties and having regard to Schedule IV of the Act.
6. Subject to the above, the arbitration shall be conducted under the aegis of Delhi International Arbitration Centre (DIAC) and in accordance with its Rules.
7. The parties are at liberty to approach the Arbitrator for further proceedings.
8. The petition is disposed of in the above terms.

VIBHU BAKHRU, J

MARCH 16, 2018
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