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

+ **ARB.P. 797/2017**

**SHRI MUKESH SHARMA SOLE PROPRIETOR OF
M/S B M SONS**

..... Petitioner

Through: Mr Sanjoy Bhaumik, Advocate.

versus

EXECUTIVE ENGINEER & ORS.

..... Respondents

Through: Mr Ruchir Mishra, Mr Mukuh Kr.
Tiwari and Mr Abhishek Rana,
Advocates.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER

% **16.03.2018**

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 one of its claim (claim no. 2) be also referred to the Sole Arbitrator, who has been appointed by the respondents to adjudicate the disputes between the parties in relation to an agreement (agreement no. O2/EE/DPD-1/2013-14 – hereafter 'the Agreement') for construction of 140 Nos. Type-V & 104 Nos. Type-VI flats in Pocket-6, at DDU Marg, New Delhi.

2. In terms of the arbitration clause, the petitioner sent a letter dated 17.10.2016 requesting respondent no. 3 to appoint an arbitrator to adjudicate the claims as indicated therein.

3. Pursuant to the request made by the petitioner, the respondents had appointed Mr Rajesh Banga, as a Sole Arbitrator to adjudicate all the claims other than claim no. 2 (that is for a sum of ₹13,08,075/- for refund of the amount imposed as liquidated damages under Clause 2 of the Agreement). It is in this context that the petitioner has filed the present petition requesting that the said claim be also referred to arbitration.

4. The learned counsel appearing for the respondents states that the said claim – claim no. 2 – is not arbitrable as it falls within the scope of excepted matters.

5. The scope of examination in a petition filed under Section 11 of the Act is now limited to only examining the existence of an arbitration agreement, which in the present case is not disputed. The question whether the dispute is arbitrable is required to be decided by the Arbitral Tribunal, in the first instance. Accordingly, the Arbitral Tribunal is directed to also consider the petitioner's claim no. 2 as indicated in his letter dated 17.10.2016.

6. It is clarified that all contentions of the parties including whether the said dispute is arbitrable are reserved.

7. It is pointed out that by an order passed on 05.01.2018, further proceedings before the Arbitral Tribunal had been kept in abeyance. The said order stands vacated.

8. The parties state that it may not be possible for the Arbitral Tribunal to enter an award within the time specified under Section 29A of the Act. In

this regard, it is clarified that the parties would also be at liberty to file an appropriate application under Section 29A of the Act for seeking extension of time for making the award.

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

10. Order dasti.

VIBHU BAKHRU, J

MARCH 16, 2018

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