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

+ **ARB.P. 810/2017 & IA No.14961/2017**

MADHURI NAGANAND

..... Petitioner

Through: Mr Rahat Bansal with Ms V.
Subramaniam T. R., Advocates.

versus

EMAAR MGF CONTRUCTION PVT LTD Respondent

Through: Ms Manmeet Arora, Ms Samapika
Biswal, Mr Tarang Gupta, Mr Ankit
Mehta and Mr Rakesh Kumar Singh,
Advocates.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER

% **09.03.2018**

1. It is pointed out that the issue involved in the present petition is squarely covered by the decision of the Coordinate Bench of this Court rendered on 17.01.2018 in other connected matters.
2. The principal issue involved in the present petition relates to the challenge to the appointment of an Arbitrator – a former Judge of this Court – to adjudicate the disputes that have arisen between the parties. The subject controversy is between the respondent, who is a builder and other flat buyers' and the issue involved pertains to the levy of Value Added Tax (VAT). Given that the controversy between the different flat buyers' and the respondent is common, the respondent nominated Justice M. L. Mehta, a former Judge of this Court as a Sole Arbitrator to adjudicate such disputes.

The Arbitrator accepted the reference and made the necessary disclosure under Section 12 of the Arbitration & Conciliation Act, 1996.

3. It is the petitioner's case that the said disclosure did not specifically disclose that the Arbitrator had also been appointed as an Arbitrator in various other cases between the respondent and the flat buyers' pertaining to the same issue. This contention is plainly unmerited, as the notice appointing the Arbitrator – which has not been disclosed by the petitioner in this petition – clearly stated as under:-

“4. Kindly note that in order to save time and costs, we are nominating Hon'ble Justice M. L. Mehta in all the arbitrations involving the issue of outstanding VAT payments under the DVAT Act, 2004 connected to the Commonwealth Games Village Apartments, Delhi. In this regard, we seek to emphasize that there is no legal bar in respect of such appointment under the Arbitration & Conciliation Act, 1996, as amended by the Arbitration & Conciliation Amendment Act, 2015. A perusal of Section 12(i), more specifically Explanation 1 thereof, shows that the grounds stated in the Fifth Schedule of the Act are indicative of the factors to facilitate the determination of whether circumstances exist which give rise to justifiable doubts as to the independence or impartiality of an Arbitrator. Therefore, the Fifth Schedule contains only guidelines. The Fifth Schedule, we positively state that neither S.No.22 nor Sl.No.24 thereof would be relevant to this case as they do not deal with the simultaneous and concurrent appointment of a single Arbitrator in multiple disputes involving the identical question, i.e. outstanding liability qua VAT due from the Buyers Agreement and the Conveyance Deed (which are identical in the case of all customers). Clauses 22 and 24 of the Fifth Schedule of the Arbitration & Conciliation Act, 1996 are reproduced hereunder:-

“22. The arbitrator has within the past three years been appointed as arbitrator on two or more occasions

by one of the parties or an affiliate of one of the parties.

XXXX XXXX XXXX XXXX XXXX

24. The arbitrator currently serves, or has served within the past three years, as arbitrator in another arbitration on a related issue involving one of the parties or an affiliate of one of the parties.”

4. A Coordinate Bench of this Court, following the decision of the Supreme Court in ***HRD Corporation (Marcus Oil and Chemical Division) v. GAIL (India) Limited : 2017 SCC OnLine SC 1024***, has dismissed other connected petitions filed by the flat buyers’. Undisputedly, the ratio of said decision (in ***Sudesh Prabhakar v. Emaar MGF Constructions Pvt. Ltd., Arb. P. 32/2018, decided on 17.01.2018***) would be equally applicable in the present case as this matter is also part of the same batch of matters that has been referred to the Sole Arbitrator.

5. The petition is, accordingly, dismissed. The pending application is also disposed of in view of the above.

VIBHU BAKHRU, J

MARCH 09, 2018
MK