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

+ **ARB.P. 14/2018**

M/S CLEAR ION EXPERTS PVT. LTD Petitioner

Through Mr Ranjan Kumar Rai, Advocate.

versus

RAHEJA DEVELOPERS LTD. Respondent

Through Mr Kishore M. Gajaria, Ms Namrata
Chandha, Advocates.

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 an agreement dated 30.08.2012 (hereafter 'the Agreement'). The said agreement includes an arbitration clause which is set out below:-

"25. SETTLEMENT OF DISPUTES BY ARBITRATION:

In case any dispute, question or controversy arises between the employer and the contractor relating to this contract and the same could not be resolved amicably, then in every case, the matter in dispute shall be referred to Arbitrator appointed as follows:

Either of the parties may be given to the other, notice in writing of the existence of such disputes or difference.

Within Fifteen (15) days of the receipt of such notice from

either party, the authorized person appointed by the Board of Directors of RAHEJA DEVELOPERS LTD., herein after called the competent authority shall send the contractor a panel of three person and thereafter the contractor within seven (7) days of the receipt of such panel communicate to the competent authority the name of one of the persons from such panel and such a person shall then be appointed as sole arbitrator by the competent authority. There will be no objection to the name of the persons appointed by owner being an officer of the Employer Company or that he had to deal with the matters to which the contract relates and that in the course of his duties as employer's officer he had expressed views on all/or any of the matters in disputes or difference.

The arbitrator to whom the matter is originally referred being transferred or vacating his office or being unable to act for any reason then the competent authority shall appoint another person to act as sole arbitrator. Such person shall be entitled to proceed from the stage at which it was left by the predecessor.

The award of the arbitrator shall be the final and binding. The arbitrator shall decide his fee as well as the cost of the arbitrator proceedings to be borne equally by both the parties.

The arbitrator with the consent of the parties can enlarge the time, from time to time to make and publish his award.

The arbitrator shall give reasons for the award.

The work under the contract shall continue if the owner so desires through the same or any other agency appointed by the owner during arbitration proceedings and no payment shall be withheld by the employer or account of such proceedings except to the extent which may be in dispute. Subject to aforesaid, the provision of Indian Arbitration Act 1996, shall apply to the arbitration proceedings under this clause.”

2. The petitioner sent a letter dated 18.12.2015 calling upon the respondent to pay the claimed amount of 11,16,666/- within the period of 15

days failing which the petitioner would be constrained to institute proceedings against the respondent. This was followed by another notice dated 07.05.2016. Thereafter, the petitioner filed a suit before the Court of Civil Judge Senior Division Faridabad being Civil Suit No. 164/2016, which was subsequently withdrawn on 19.08.2017. This Court is informed that this was for the reason that the respondent had filed an application under Section 8 of the Act.

3. Thereafter, the petitioner issued a notice dated 01.10.2017 to the respondent invoking the arbitration clause and calling upon the respondent to communicate a panel of three proposed arbitrators to enable the petitioner to nominate one of them. Concededly, the said notice was not responded to by the respondent.

4. There is no dispute as to the existence of the arbitration agreement. In this view it would be necessary to appoint an arbitrator to adjudicate the disputes between the parties.

5. The learned counsel appearing for the respondent submits that since the sum involved in the dispute is not very large, it would be apposite if the parties are given an opportunity to settle their disputes amicably.

6. In view of the above and with the consent of the parties, it is directed that a sole arbitrator be appointed by the Delhi International Arbitration Centre (DIAC) for adjudication of the disputes that fall within the scope of the aforementioned arbitration clause as quoted. The arbitration shall be conducted under the aegis of DIAC and in accordance with its Rules.

7. The parties are directed to appear before the Co-ordinator, DIAC on 01.08.2018 at 11:00 AM.

8. In the meanwhile, the parties are referred to Delhi High Court Mediation and Conciliation Centre (DHCMCC) for attempting to amicably resolve the disputes. The parties shall appear before DHCMCC on 16.04.2018 at 4.00 p.m.

9. In the event, the parties are successful in resolving their dispute they shall communicate the same to the Coordinator, DIAC and he would not be required to take any further steps. However, if the parties are unable to resolve their disputes prior to 31.07.2018 they shall appear before the Coordinator, DIAC as directed.

10. The petition is disposed of in the above terms.

VIBHU BAKHRU, J

APRIL 10, 2018

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