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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **ARB.P. 15/2019**
CASE NEW HOLLAND CONSTRUCTION EQUIPMENT (INDIA)
PRIVATE LIMITED & ANR. Petitioners
Through: Mr.Ravi Kishore & Mr.Deepak
Jaiswal, Advs.

versus

GLOBEX SOLUTIONS PRIVATE LIMITED Respondent
Through: None.

CORAM:
HON'BLE MR. JUSTICE NAVIN CHAWLA

ORDER
% **13.02.2019**

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 a Sole Arbitrator for adjudicating the disputes that have arisen between the parties in relation to the Warehouse Service Contract dated 18.04.2017 executed between the parties. The Arbitration Agreement between the parties is contained in Clause 18.3 thereof which is reproduced hereinbelow:-

"18.3 Dispute Management

- a) *Any and all disputes, controversies and conflict ('Dispute') arising out of or relating to or in connection with this Contract or the performance or non-performance of the rights and obligations set forth herein or the breach, termination, invalidity or interpretation thereof shall be referred for arbitration in terms of the Arbitration and Conciliation Act, 1996 or any amendments thereof. The place of arbitration shall be Delhi and*

the language used in the arbitral proceedings shall be English. Arbitration shall be conducted by a sole arbitrator.

- b) The sole arbitrator shall be appointed by Managing Director of CNHIPL and Contractor, and the Sole Arbitrator shall be a person not below the rank of Retired Judge.*
- c) The arbitral award shall be writing and shall be final and binding on each party and shall be enforceable in any court of competent jurisdiction. None of the Parties shall be entitled to commence or maintain any action in a court of law upon any Disputes arising out of or relating to or in connection with this Contract (infringement of IPR excepted), except for the enforcement of an arbitral award or as permitted under the Arbitration and Conciliation Act, 1996.*
- d) Pending the submission to arbitration and thereafter, till the tribunal renders its award or decision, the Parties shall, except in the event of termination of this Contract or in the event of any interim order/award is granted under the aforestated Act, continue to perform their obligations under this Contract.”*

Disputes having arisen between the parties, the petitioner invoked the Arbitration Agreement by the notice dated 21.09.2018, also proposing names for appointment of the Arbitrator. The respondent, however, by its e-mail dated 05.10.2018, while not refuting the existence of the Arbitration Agreement, suggested its own names as Arbitrators.

As the parties could not arrive at a consensus on the name of the

Arbitrator to be appointed, the present petition was filed. Notice of this petition was issued to the respondent on 14.01.2019.

The learned counsel for the petitioner submits that the petitioner has filed an affidavit of service enclosing therewith the tracking report which shows that the notice was duly delivered to the respondent on 01.02.2019.

In spite of service and a pass over being granted none appears for the respondent. As the existence of the Arbitration Agreement and due invocation thereof remains uncontested, I see no impediment in appointing a Sole Arbitrator for adjudicating the disputes that have arisen between the parties in relation to the abovementioned Agreement.

I appoint **Justice Manmohan Sarin**, Former Chief Justice, J&K High Court (R/o D-130, Panchsheel Enclave, New Delhi-110017, Mobile: 9818000210) as a Sole Arbitrator for adjudicating such disputes.

The Arbitrator shall give disclosure under Section 12 of the Act before proceeding with the reference.

The petition is allowed in the above terms, with no order as to cost.

Dasti.

NAVIN CHAWLA, J

FEBRUARY 13, 2019/rv