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IN THE HIGH COURT OF DELHI AT NEW DELHI

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ARB.P. 17/2019

FRAGRANCE FINANCE AND INVESTMENT PVT LTD

..... Petitioner

Through: Mr.Manan Batra & Mr.Abhimanyu
Gupta, Advs.

versus

LAXMI BUILDTECH PVT LTD

..... Respondent

Through: Mr.Harsh Sethi, Adv.

CORAM:

HON'BLE MR. JUSTICE NAVIN CHAWLA

ORDER

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07.02.2019

1. This petition under Section 11 of the Arbitration and conciliation Act, 1996 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 Agreement to Sell dated 24.03.2016 alongwith Addendum thereto dated 08.07.2017.
2. The Arbitration Agreement between the parties is contained in Clause 6.2 of the Addendum dated 08.07.2017 and reads as under:-

“6.2 Arbitration: Any dispute, controversy, claim or disagreement of any kind whatsoever between or among the Parties in connection with or arising out of this Agreement or the breach, termination or invalidity thereof, failing amicable resolution through negotiations, shall be referred to and finally resolved by arbitration at the Delhi International Arbitration Centre under the DAC (Arbitration Proceedings) Rules, which Rules are deemed to be incorporated by reference into this Clause.

- a) *The number of arbitrators shall be one.*
- b) *The seat, or legal place, of arbitration shall be New Delhi, India.*
- c) *The language to be used in the arbitration shall be English.”*

3. The petitioner invoked the Arbitration Agreement by its notice dated 01.10.2018, proposing the name of the Arbitrator. Instead of waiting for confirmation of appointment from the respondent and Delhi International Arbitration Centre (DIAC), the Arbitrator took cognizance of the proposal and entered reference. This certainly was not permissible in law as the appointment was to be done by DIAC and that too, by following its procedure. The respondent has also raised such objection before the Arbitrator. In light of the objection, the present petition has been filed by the petitioner.

4. The learned counsel for the respondent submits that the Arbitrator took cognizance of his appointment and entered reference illegally and his appointment is itself null and void not being in terms of the Arbitration Agreement.

5. Recording the above submission, the mandate of the Arbitrator stands terminated and the petitioner is permitted to approach DIAC for appointment of an Arbitrator in accordance with its Rules. I may also clarify that if any fee or other charges are payable to the earlier Arbitrator, the same shall not be borne by the respondent.

6. The petition is disposed of in terms of the above directions.

NAVIN CHAWLA, J

FEBRUARY 07, 2019/rv