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

+ **ARB.P. 300/2019**

MAHESH CHANDRA SINGHAL & ANR. Petitioners

Through: Mr. Rahul Rathore, Advocate with
Mr. Karunesh Kumar Shukla,
Advocate.

versus

BPTP LIMITED & ANR. Respondents

Through: Mr. Manish Sharma, Advocate.

CORAM:

HON'BLE MR. JUSTICE SANJEEV NARULA

ORDER

% **05.07.2019**

1. The present petition under section 11(5) and/or (6) of the Arbitration and Conciliation Act, 1996 (hereinafter 'the Act') seeks the appointment of a sole Arbitrator. The Arbitration Clause is contained in the Agreement dated 10th June 2011 described as "Commercial Space Buyer's Agreement".

2. Learned counsel for the Petitioner submits that the notice dated 12th March 2019, invoking the Arbitration Clause was duly served upon the Respondent. Learned counsel for the Respondent, does not dispute the existence of the Arbitration Agreement. However, with in respect of the invocation of the arbitration clause, he contends that he does not have any instruction either to deny or admit the same. Learned Counsel for the

Petitioner has placed the speed post receipts and the delivery report of the invocation notice on record, which shows that the speed post package was delivered to the Respondent.

3. Learned counsel for the Respondent also objects to the prayer made in the application on the ground that the invocation of the Arbitration Clause is not in conformity with the Arbitration Agreement. The Arbitration Agreement between the parties is contained in the Commercial Space Buyer's Agreement, which reads as under:-

“55. All or any disputes arising out of or touching upon or in relation to the terms of this Agreement including the interpretation and validity of the terms and the respective rights and obligations of the parties shall be settled amicably by mutual discussion failing which the same shall be settled through Arbitration. The arbitration proceedings shall be governed by the Arbitration and Conciliation Act, 1996 or any statutory amendments/ modifications thereof for the time being in force. **The arbitration proceedings shall be held at an appropriate location in New Delhi by a sole arbitrator appointed by the Company, The Sub-Lessee hereby confirms.** That he/she shall have no objection to this appointment.

56. The Courts at New Delhi alone shall have the jurisdiction in all matters arising out of/touching upon and/or concerning the Agreement/Space regardless of the place of execution of this application or situation of Space.”

4. The notice invoking the Arbitration Clause, *inter alia*, states as under:-

“As you have failed to refund my clients' monies, my clients hereby invokes arbitration and calls upon you to appoint an independent arbitrator who is on the panel of Delhi International Arbitration Centre. I look forward to your prompt response, within thirty days of the receipt of this letter.”

5. According to Respondent's counsel, the aforementioned invocation is improper as the Petitioner has called upon the Respondent to make the appointment of an independent Arbitrator who is on the panel of Delhi International Arbitration and Conciliation Centre and whereas the Arbitration Clause gives the Respondent No. 1 (described as 'Company' in the Agreement) the right to make the appointment of the Arbitrator.

6. I have given my thoughtful consideration to this objection, but find the same to be meritless. Respondent has not replied to the said notice or hereto before taken the objection that the invocation is improper. Moreover, the notice called upon the Respondent to make the appointment of an independent Arbitrator. It was not incumbent that the Respondent had to necessarily make an appointment from the panel of Delhi International Arbitration and Conciliation Centre. The Notice is not suggesting any name but that rather calls upon the Respondent to make the appointment. Respondent thus had the option to make the appointment in terms of the Arbitration Clause. Respondent failed to do so. The wording of the invocation notice essentially stresses on appointment of an "independent arbitrator" in conformity with the scheme of the Act. Merely because it is suggested that the Arbitrator should be from the panel of Delhi International Arbitration and Conciliation Centre, it would not invalidate the invocation notice. At this stage, since the Respondent has failed to make the appointment till the filing of the present petition, in view of the law settled by the Supreme Court in ***Datar Switchgears Ltd v. Tata Finance Ltd,(2000) 8 SCC 151, Union of India v. Bharat Battery Manufacturing Co. (P) Ltd.,***

(2007) 7 SCC 684 and *Punj Lloyd Ltd. v. Petronet MHB Ltd.*, (2006) 2 SCC 638 the petition is allowed.

7. Accordingly, the parties are referred to Delhi International Arbitration and Conciliation Centre for appointment of the Arbitrator as per its rules. Learned Arbitrator will issue a declaration under Section 12 read with the attendant provisions of the Act before entering upon reference. At this stage, learned counsels for both the parties on instructions state that they would like to explore the possibility of a mutual settlement before proceeding with the Arbitration.

8. Accordingly, the parties are directed to appear before the Delhi High Court Mediation and Conciliation Centre on 10th July 2019. The Delhi International Arbitration and Conciliation Centre shall not take further steps for constitution of the Arbitral Tribunal for a period of one month from today. During this period, parties shall be free to negotiate the settlement before the Mediation centre. In case the settlement does not fructify, the arbitration proceedings will follow. The Registry will dispatch a copy of the order passed today to the Coordinator, DIAC and Delhi High Court Mediation and Conciliation Centre.

9. The petition is allowed in the above terms.

SANJEEV NARULA, J

JULY 05, 2019

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