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

+ CS(OS) 671/2012 & I.A.1349/2019

M/S ARUNA INFRACON PVT LTD Plaintiff

Through : Mr.H.L.Tiku, Senior Advocate with
Mr.Munish Kochhar, Ms.Yashmeet
Kaur, Advocates

versus

RAVINDER C.P. NAVALKAR Defendant

Through : Mr.S.M. Walawaikar, Ms.Sumati
Sharma, Advocates

CORAM:

HON'BLE MR. JUSTICE J.R. MIDHA

ORDER

% **29.01.2019**

1. Learned senior counsel for the plaintiff submits that there is a valid arbitration agreement between the parties contained in Clause 14 of the agreement dated 16th March, 2009 which is noted in para 25 of the order dated 18th January, 2019. It is submitted that the arbitration agreement provides for resolution of disputes by a sole arbitrator and the arbitration has to be conducted at Delhi and the Courts at Delhi have jurisdiction in respect of the arbitration. Learned senior counsel for the plaintiff seeks reference of the disputes between the parties to the arbitration of a sole arbitrator to be appointed by this Court.
2. Learned counsel for the defendant does not dispute the existence of a valid arbitration agreement between the parties. Learned counsel for the defendant, however, submits that there is no valid cause of action in favour of the plaintiff. The defendant has other objections to the plaintiff's claim including non-joinder of the necessary parties.
3. After some hearing, learned counsel for the defendant agrees to the appointment of a sole arbitrator by this Court subject to the plaintiff bearing

the fees of the arbitrator in respect of his claim in the first instance subject to the outcome of the arbitration and all the objections including the objection to the validity of cause of action to be considered by the learned arbitrator.

4. Learned senior counsel for the plaintiff submits on instructions that the plaintiff shall bear the cost of the arbitration proceedings with respect to the plaintiff's claim in the first instance subject to the outcome of the arbitration. It is further submitted that if the defendant have any counter claim, the defendant shall have to bear the fees of the arbitrator in respect of the counter claim to which the defendant has no objection.

5. Since both the parties are agreeable to the appointment of an arbitrator by this Court, this Court appoints Justice Kailash Gambhir (Retd.), (Mobile No.9871300033) as a sole arbitrator to adjudicate the claims and counter claims between the parties. All objections of the defendant including the objection to the validity of the cause of action of the plaintiff shall be considered by the learned arbitrator in accordance with law.

6. The fees of the arbitrator shall be according to Fourth Schedule of the Arbitration and Conciliation Act, 1996. The plaintiff shall pay the fees in respect of its claim whereas the defendant shall pay the fees in respect of the counter claim, if raised, subject to the outcome of the arbitration proceedings.

7. The learned arbitrator shall ensure the compliance of Section 12 of Arbitration and Conciliation Act, 1996 before commencing the arbitration.

8. Learned counsel for the plaintiff seeks refund of the Court fees. Since the matter is being referred to arbitration under section 89 of Code of Civil Procedure, the Court fees be refunded back to the plaintiff under Section 16 of the Court Fees Act.

9. The suit is disposed of in the above terms. The pending application is disposed of.

10. Copy of this order be sent to the learned arbitrator.
11. Copy of this order be given *dasti* to counsels for the parties under signatures of the Court Master.

JANUARY 29, 2019/dk

J.R. MIDHA, J