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

+ ARB.P. 693/2018

H M APARTMENTS PVT LTD

..... Petitioner

Through: Mr. Anand Mishra and Ms. Karmika
Bahuguna, Advocates

versus

REALTECH CONSTRUCTION PVT LTD & ANR Respondents

Through: Mr. Raj Vardhan, Adv. for R-1
Mr. Lokesh Bhola, Ms. Harshita
Agarwal and Mr. Karan, Advocates

CORAM:

HON'BLE MR. JUSTICE NAVIN CHAWLA

ORDER

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30.01.2019

1. 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 an Arbitrator for adjudication of the disputes that have arisen between the parties in relation to the Space Buyer Agreement dated 08.10.2015.

2. The said Agreement contains an arbitration agreement between the parties in form of the following clause:-

“Any dispute, controversy or claim between the Parties arising out of this Agreement in respect of any term/interpretation of term thereof, shall at first instance be referred for adjudication to a sole Arbitrator mutually appointed by the Vendor and the Vendee in accordance with provisions of the Arbitration & Conciliation Act, 1996 as amended from time to time and the decision of such sole arbitrator shall be final and binding on both the Parties. The place of arbitration shall be at Delhi and

the proceedings shall be conducted in English. The Vendee further agrees that it shall not commence any suit or legal proceeding against the Vendor concerning a dispute hereunder until such dispute has been finally settled in accordance with the arbitration procedure provided herein. In case the final arbitration award is not passed within 4 (four) months, both the parties will be free to take any legal recourse they deem fit.”

3. The abovesaid Agreement was executed between A.S. Apartments (P) Ltd. and the respondents. A.S. Apartments (P) Ltd. vide its letter dated 18.10.2015 assigned its rights and liabilities under the said Agreement in favour of the petitioner herein.
4. Disputes having arisen between the parties, the petitioner invoked the arbitration agreement vide legal notice dated 27.06.2018. Having failed to receive any response to the same from the respondents, the present petition was filed.
5. In spite of opportunities being granted, no reply to the petition has been filed by respondent no. 1. The learned counsel for respondent no. 1 submits that reply could not be filed as the Director of the respondent no. 1 company is in police custody.
6. I do not see this to be a sufficient reason to grant further time to the respondent no. 1 to file its reply.
7. As far as respondent no.2 is concerned, the learned counsel for respondent no.2 submits that respondent no.2 was merely a ‘Confirming Party’ being the owner of the plot of land on which the Mall in question was to be constructed. He submits that the petitioner can have no claim against respondent no.2. He further submits that the space in the Mall falling in the

share of respondent no.1 has been attached pursuant to orders passed by the Income Tax Authorities.

8. In my opinion, whether under the terms of the Agreement, the petitioner can maintain any claim against respondent no. 2 or not, would be a question to be determined by the Arbitrator and cannot be adjudicated upon at this stage. As far as the attachment order passed by the Income Tax Authorities is concerned, the same again cannot act as an impediment in appointment of an Arbitrator for adjudication of the disputes that have arisen between the petitioner and the respondents.

9. In view of the above, I see no impediment in appointing a Sole Arbitrator for adjudicating the disputes that have arisen between the parties in relation to the above-mentioned Space Buyer Agreement.

10. At the request of learned counsel for the parties, the parties are referred to the Delhi International Arbitration Centre (DIAC) where they shall appear on 07.02.2019 at 2.00 p.m.

11. The DIAC shall appoint a Sole Arbitrator for the adjudication of the disputes between the parties. The DIAC rules as to the procedure and fee shall be applicable to such arbitration proceedings.

12. All contentions of the parties shall remain open in such arbitration proceedings.

13. The petition is disposed of with above directions, with no order as to cost.

Dasti.

NAVIN CHAWLA, J

JANUARY 30, 2019

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