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

+ ARB.P. 871/2018

AJAY SHANKAR ARORA & ORS. Petitioners
Through Mr.Satyabrata Panda, Mr.Shashwat
Panda, Advocates
versus

BHARAT ARORA & ORS. Respondents
Through Mr.Monish Panda, Advocate for
respondents No.1 and 3.

CORAM:
HON'BLE MR. JUSTICE J.R. MIDHA

ORDER
17.01.2019

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1. The petitioners are seeking appointment of an arbitrator under Section 11 of the Arbitration and Conciliation Act.
2. The arbitration agreement between the parties contained in Clause 18 of the partnership deed dated 30th May, 2009. The petitioners invoked the arbitration vide notice dated 16th August, 2016 and suggested the name of an arbitrator which was replied by respondent No.2 on 29th August, 2016 who did not agree to the name of the arbitrator suggested by the petitioners. The petitioners issued a second notice dated 23rd August, 2016 and suggested the name of a retired High Court Judge to act as an arbitrator. Respondent No.1 in the reply dated 07th September, 2018 did not agree to the name suggested by the petitioners and the respondents suggested the names of three retired Judges of this Court to act as an arbitrator which was not acceptable to the petitioners.
3. Learned counsel for respondents No.1 and 3 disputes the existence of an arbitration agreement. It is submitted that the arbitration agreement is not valid. It is further submitted that the petitioners claim is barred by

limitation. It is further submitted that petitioners No.4 and 5 are not parties to the arbitration agreement.

4. Learned counsel for the petitioners submits that the respondents have admitted the existence of the arbitration agreement in their replies dated 29th August, 2016 and 07th September, 2018 and have even suggested the names of the arbitrators. It is submitted that it is irresponsible for the respondents to raise such an objection before this Court. With respect to respondent's no.4 and 5, it is submitted that they are the legal representatives of the Late Mr. Virender Shankar Arora who was party to the arbitration agreement. With respect to the objections of limitation raised by the respondents, it is submitted that this Court has to confine itself to ascertain the existence of the arbitration agreement under section 11 (6) of the Arbitration and Conciliation Act and the other objections have to be considered by the Arbitral Tribunal.

5. This Court is of the view that there is a valid arbitration agreement between the parties duly admitted by the respondents in their replies dated 29th August, 2016 and 07th September, 2018. It is highly irresponsible for the respondents to raise such objection. The other objections raised by the respondents have to be examined by the Arbitral Tribunal. Under Section 11 (6A) of the Arbitration and Conciliation Act, this Court has to confine to the examination of the existence of the arbitration agreement. The respondent is at liberty to urge these contentions before the arbitrator

6. The petition is allowed and Justice Nisar Ahmed Kakru, former Chief Justice of Andhra Pradesh (Mobile No.:9419000938) is appointed as sole arbitrator to adjudicate the disputes between the parties including their claims and counter claims, if any. The Arbitral Tribunal shall consider the objections raised by the respondents with respect to the limitation and the impleadment of petitioners No.4 and 5 in this petition.

7. The arbitration shall be conducted under the aegis of Delhi International Arbitration Centre.
8. The learned arbitrator shall ensure the compliance of Section 12 read with Fifth and Sixth schedule of Arbitration and Conciliation Act, 1996 before commencing the arbitration.
9. The fee of the learned arbitrator shall be in accordance with the schedule of fees prescribed under the Delhi High Court Arbitration Centre (Administrative Costs and Arbitrators' Fees) Rules.
10. Copy of this order be sent to the learned arbitrator.
11. Copy of this order be sent to Delhi International Arbitration Centre.
12. Copy of this order be given dasti to counsel for the parties under the signature of the Court Master.

J.R. MIDHA, J.

JANUARY 17, 2019/dk