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

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Date of decision: 20.11.2019

+ ARB.P. 770/2017

SURISTH TIWARY

..... Petitioner

Through: Mr. Adarsh Kumar Tiwari, Mr. Vivek
Tripathi & Ms. Sonal Saroha,
Advocates

Versus

AMARPALI HOMES PROJECTS LTD. & ORS. Respondents

Through: Ms. Ranjana Roy Gawai & Ms.
Prachi, Advocates for R-8.

CORAM:

HON'BLE MS. JUSTICE JYOTI SINGH

JYOTI SINGH, J. (ORAL)

1. Rejoinder filed by the petitioner is still lying under objections. Learned counsel for the petitioner submits that he does not wish to place the rejoinder on record as the only averment made in the rejoinder is that respondent No. 8 may be deleted from the array of parties as no relief has been sought against him. He submits that he wants to argue the matter in the absence of rejoinder being on record.

2. Respondent Nos. 1, 2, 4 and 5 have not appeared on any date despite service. Insofar as respondent Nos. 3, 6 and 7 are concerned, the order dated 08.10.2018 records the appearance of one Ms. Shweta and one Mr. Rohit

Pandey, Advocates on behalf of the said respondents. Despite having taken time to place on record the Memo of Appearance/Vakalatnama, neither of the two documents have been filed.

3. Matter has been called twice. There is no appearance on behalf of any of the respondent Nos. 1 to 7. Respondent Nos. 1 to 7 are proceeded ex-parte.

4. Learned counsel for the petitioner seeks to delete respondent No. 8 from the array of parties. Let respondent No.8 be deleted. Amended memo of parties be filed on Court record.

5. Since the respondents have been proceeded ex-parte, the Arbitration Clause mentioned in the Share Purchase Agreement is deemed to be admitted. The Arbitration Clause between the parties is as under:-

"9.1 This agreement and all questions of its interpretation shall be construed in accordance with the laws of the Republic of India, without recourse to its principles of conflict of laws.

9.2 In the event that any dispute, difference, controversy or claim shall arise between the Parties arising out of or related to the provisions or performance of this Agreement, either Party may give notice to the other party of its intention to submit the issues specified in such notice to arbitration.

9. 3 If the issues are not amicably resolved between the Parties within 30 days of the issuance of such notice, either Party may thereafter submit the issues to arbitration. The arbitration shall be held in accordance with the Arbitration and Conciliation Act, 1996.

9.4 The arbitration proceedings shall be conducted at New Delhi and English shall be the sole language of the proceedings of the arbitration."

6. The petitioner had invoked arbitration in terms of the said Clause on 12.07.2013. Reply was sent by respondent no. 8 vide its letter dated 12.08.2013 wherein reference to arbitration was denied. The petitioner had then approached the Allahabad High Court for appointment of an Arbitrator by filing a petition bearing Arbitration and Conciliation Application No.64/2013. The case was pending in the Allahabad High Court till 24.08.2017. On the said date, the petition was dismissed as withdrawn as the Court was of the opinion that seat of arbitration was Delhi and the Allahabad High Court thus had no jurisdiction to deal with the matter. Liberty was, however, granted to the petitioner to approach the Court having jurisdiction in terms of the Arbitration Agreement. It is hereinafter that the present petition has been filed.

7. Having heard the learned counsel, I am of the view that the present petition deserves to be allowed.

8. Hon'ble Mr. Justice Dipak Misra, former Chief Justice of India, is appointed as Sole Arbitrator to adjudicate the disputes between the parties.

9. The address and mobile number of the learned Arbitrator is as under:

Hon'ble Mr. Justice Dipak Misra, Former Chief Justice of India
97, Ground Floor, Sukhdev Vihar,
New Delhi-110025
Contact No.: 26935111

10. The learned Arbitrator shall give disclosure under Section 12 of the Act, before entering upon reference.
11. Fee of the Arbitrator shall be fixed as per Fourth Schedule of the Act.
12. The petition is allowed in the aforesaid terms.

JYOTI SINGH, J

NOVEMBER 20, 2019
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