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

+ **ARB.P. 53/2021**

**VISIONS APROPRIETORSHIP CONCERN THROUGH ITS
PROPRIETOR MS PAYAL KAPOOR Petitioner**

**Through Mr. Manish Kumar Srivastava
and Mr. Akhil Hasija, Advocates**

versus

**MEGA MALL CONDOMINIUM
ASSOCIATION & ANR. Respondents**

**Through Mr. G S Chauhan, Advocate for
Respondent No.1**

**Mr. Bharat Singh Sisodia, Advocate for
Respondent No. 2**

**CORAM:
HON'BLE MR. JUSTICE C .HARI SHANKAR**

ORDER (ORAL)

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16.09.2021

(Video-Conferencing)

1. This is a petition under Section 11(5) of the Arbitration and Conciliation Act, 1996 (“1996 Act”, in short), for referring the disputes between the parties to arbitration. The arbitration clause, in the agreement between the parties, reads as under:

“17.1 All disputes, controversies and differences arising out of or relating to this Agreement, including a dispute relating to the validity or existence of this Agreement and any non-contractual obligations arising out of or in connection with this Agreement (“Dispute”) shall be referred for arbitration under the provisions of the then prevailing Arbitration and Conciliation Act, 1996 (or any amendment thereto).

17.2 The arbitral proceedings shall be conducted by a sole arbitrator to be appointed by mutual consent of JLLBO and/or

Client and Service Provider...As part of the terms of the appointment, the arbitrator shall be required to produce a final and binding award or awards within three (3) months of the appointment of the arbitrator. Parties shall use their best efforts to assist the arbitrator to achieve this objective, and the parties agree that this three (3) month period shall only be extended in exceptional circumstances, which are to be determined by the arbitrator in its absolute discretion.

17.3 The arbitral award passed by the arbitrator shall be final and binding on the Parties and shall be enforceable in accordance with its terms. The arbitrator shall state reasons for its findings in writing. The Parties agree to be bound thereby and to act accordingly.

17.4 The arbitration shall be held at New Delhi and the arbitral proceedings shall be conducted in the English language.

17.5 This Clause 17 does not preclude a Party from seeking equitable relief, including injunction and preliminary injunction from a court of law.

17.6 During the pendency of any Dispute, the Service Provider shall continue to perform the Services in accordance with the terms of this Agreement.

17.7 This Agreement is governed by the laws of India. The Parties agree to submit to the exclusive jurisdiction of the courts of New Delhi alone.

17.8 This Clause 17 shall survive any termination or expiry of this Agreement.”

2. Notice invoking arbitration was sent by the petitioner to the respondents on 4th November, 2020. The substance of the dispute is set out in paras 1 to 12 of the said notice, which are, for the sake of brevity, not being reproduced herein.

3. Suffice it to state that the claim of the petitioner, against the respondents, is to the tune of ₹ 31,88,197/- along with interest.

4. Mr. Chauhan, learned Counsel for Respondent No. 1, submits that he has no objection to the dispute being referred to arbitration.

5. Mr. Sisodia, learned Counsel for Respondent No. 2, merely submits that he was acting only at the behest of Respondent No. 1 and that, therefore, his client should not be saddled with costs of arbitration.

6. That would be an issue to be taken up before the learned Arbitral Tribunal. There is no dispute about the fact that Respondent Nos. 1 and 2 are both parties to the arbitration agreement.

7. In view thereof, I deem it appropriate to refer the contest between the parties to the Delhi International Arbitration Centre (DIAC), which would appoint a suitable arbitrator to arbitrate on the disputes between the parties.

8. The arbitration shall take place under the aegis of the DIAC and would abide by its rules and regulations.

9. The arbitrator would also be entitled to charge fees in accordance with the schedule of fees maintained by the DIAC or otherwise shall be fixed in consultation with the parties to the arbitration.

10. The arbitrator would furnish the requisite disclosure under Section 12(2) of the 1996 Act within a week of entering on reference.

11. The petition stands allowed of in the aforesaid terms with no orders as to costs.

C. HARI SHANKAR, J.

SEPTEMBER 16, 2021

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