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* IN THE HIGH COURT OF DELHI AT NEW DELHI
+ ARB.P. 743/2020

JAGDISH KUMAR DHAMIJA AND ANOTHER Petitioner
Through: Mr. Ashish Upadhyay, Advocate.

versus

M/S. ADI INFRA DEVELOPERS LLP (A PARTNERSHIP FIRM)
..... Respondent
Through: Mr. Lalit Kumar, Advocate.

CORAM:
HON'BLE MR. JUSTICE SANJEEV NARULA

% ORDER
09.09.2021

[VIA VIDEO CONFERENCING]

1. The present petition under Section 11(6) of the Arbitration and Conciliation Act, 1996 (in short 'the Act') has been filed seeking appointment of an Arbitrator for adjudication of disputes that have arisen out of and in relation to the Memorandum of Settlement ('MoS') dated 3rd December, 2018. The arbitration agreement between the parties is contained in Clause 18 which reads as under:

"That the parties had agreed to attempt in good faith to resolve any disputes/differences or claim arising out of or in relation to this Agreement through mutual discussion. In case it is not resolved within 30 days from the date of receipt of the written notice (setting out dispute or claim), by the other party, the complaining party may issue a notice of reference, invoking settlement of such dispute through sole arbitration, to be mutually appointed by the parties. Any dispute relating to construction, managing, scope, operation or effect of this MOU or the validity or the breach thereof be referred to and finally and conclusively settled by mutually appointed sole arbitrator, in accordance with law in effect in India governing the

arbitration. The place of arbitration shall be at New Delhi."

2. Mr. Lalit Kumar, counsel for the Respondent, does not dispute the existence of the arbitration agreement, but he opposes the petition by arguing that the same is pre-mature. He submits that the Petitioner is not allowing the Respondent to carry out the construction in the property which is subject matter of the MoS. Further, by relying upon the judgment of the Supreme Court in *Vidya Drolia v. Durga Trading Corporation*¹, he contends that the present petition is not maintainable as there is already a pending suit between the parties relating to the same subject matter.

3. On the other hand, according to the Petitioner, the pending civil suit being CS(OS) 601/2019 (*Jagdish Kumar Dhamija & Anr. v. Darshan Lal & Anr.*) cannot be an impediment for referring the parties to arbitration. It is explained that disputes between parties arose in relation to the Agreement to Sell dated 3rd December, 2018 whereby the Petitioners and partners of Respondent firm were to get respective shares in property at Plot 2/9, Kalka Ji, New Delhi- 110019. On the very same day, the parties entered into the MoS whereby it was agreed that the existing building would be demolished, and a new residential building would be constructed instead. As per the MoS, construction was to be completed within a period of 18 months. Certain disputes arose between the parties regarding the sale of a portion of another property and as a result thereof, the Respondent slowed down the construction of the suit property. Thereafter, no construction took place after March, 2020 and the Petitioner was constrained to raise construction on its own in October, 2020. The partners of the Respondent firm caused

¹ (2021) 2 SCC 1.

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disruptions to the construction and did not allow the same to proceed. The Petitioner filed a petition under Section 9 of the Act on account of the said disputes and also, sent a notice of invocation on 14th October, 2020. In the Section 9 proceedings, on 6th November, 2020 the Respondent stated that the Petitioner may move the appropriate Court for the appointment of an Arbitrator, but vehemently opposed the same in its reply to the notice of invocation. Hence, the present petition.

4. The Court has heard the counsel for the parties. On 14th December, 2020, at the stage of issuing notice, the submission of the Respondent regarding the pendency of the civil suit was taken note of. The Court also took note of the contention of the Petitioner that the suit did not pertain to the property which is the subject matter of the MoS dated 3rd December, 2018 and declined to tag the present petition along with the said suit.

5. There is no reply filed by the Respondent, although a request is made for granting time to file the same. Since the Court has extensively heard the counsel for the Respondent on the objections to the present petition, it is not deemed necessary to grant time to file a reply. The objections as noted above, do not bring out any ground for the Court to reject the present petition. Particularly, since the arbitration agreement is not in dispute.

6. Since there is a consensus between the parties regarding the existence of the arbitration agreement, the Court has no hesitation in allowing the present petition.

7. Accordingly, Ms. Sangeeta Bharti, Advocate (Contact No. +91 9811112863) is appointed as the Sole Arbitrator to adjudicate the disputes that have arisen between the parties in respect of the Memorandum of Settlement dated 3rd December, 2018.

8. With consent of parties, it is further directed that the learned Arbitrator shall conduct the arbitration proceedings under the aegis of Delhi International Arbitration Centre (in short 'DIAC') and in accordance with the DIAC Rules.

9. The learned Arbitrator shall charge their fees in terms of the DIAC Rules.

10. The parties are directed to appear before the learned Arbitrator as and when notified. This is subject to the Arbitrator making the necessary disclosure under Section 12(1) of the Act and not being ineligible under Section 12(5) of the Act.

11. It is clarified that the Court has not examined any of the claims of the parties and all rights and contentions on merits are left open. Both the parties shall be free to raise their claims/counter claims before the learned Arbitrator in accordance with law.

12. Accordingly, the present petition is disposed of.


SANJEEV NARULA, J

SEPTEMBER 9, 2021

v