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

+ **ARB.P. 503/2021**

MAHALAKSHMI INFRAENGINEERS PVT. LTD

..... Petitioner

Through: Mr. Bipin Kumar Prabhat, Adv.

versus

**FAKRUDDIN MEMORIAL COOPERATIVE GROUP
HOUSING SOCIETY LTD ORS** Respondents

Through: Mr. Chirag Alagh, Adv. for R-1
& 2

Mr. Anil Panwar, Adv. for R-3

CORAM:

HON'BLE MR. JUSTICE C. HARI SHANKAR

ORDER (ORAL)

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06.10.2021

(Video-Conference)

1. At the outset, the Court notes that there was no justification for impleading Respondent Nos. 1 and 2, being M/s Fakruddin Memorial Cooperative Group Housing Society Ltd. ('the Society' in short) and its president/secretary, respectively, as separate respondents. Accordingly, the Court treats Respondent Nos. 1 and 2, together, as the Society through the president/secretary.

2. Respondent Nos. 1 and 2 are represented by Mr. Chirag Alagh, learned Counsel, whereas Respondent No.3 is represented by Mr. Anil Panwar, learned Counsel. On 27th November, 2014, an agreement, for construction of a residential project, at Plot No. 18, Sector-10,

Dwarka, New Delhi-110075 was executed between the petitioner, as the third party, Respondent No.3 as the second party and the society as the first party.

3. According to the petitioner, owing to default by the respondents, of their obligations, considerable delay in execution of the work was occasioned. The petitioner is also aggrieved by the fact that the bills raised by the petitioner were not honoured, in time, by the respondents. This resulted in the petitioner issuing a notice dated 15th January, 2020 to the respondent to pay an amount of ₹3,34,07,056/-. This amount, has, according to Mr. Prabhat, learned Counsel for the petitioner increased, with passage of time, the amount due being, according to the petitioner's estimation at this point of time, ₹4,01,21,845/-.

4. Clause 7 of the agreement provides for resolution of disputes between the parties by arbitration and reads as under:

"7. **Arbitration**

7.1 Any differences arising out of or in connection with the present agreement shall be amicably discussed and resolved between the parties and in case such resolution could not be reached within 60 days of raising of such dispute, then the matter shall be referred to arbitration of sole arbitrator appointed by consent of all the three parties to this agreement and in case the parties fail to appoint an arbitrator mutually then the same shall be appointed by moving appropriate petition/application before the court and the decision of the arbitrator shall be final and binding to the parties to this agreement."

5. On 20th June, 2020, the petitioner issued a notice invoking arbitration under Clause 7 of the agreement, to the respondents. Replies to this notice were sent by the society and the Respondent no. 3, separately.

6. As no arbitrator could be jointly appointed between the parties, the petitioner has moved this Court under Section 11(6) of the 1996 Act, for appointment of an arbitrator.

7. Mr. Panwar, learned Counsel for Respondent No.3 objects to the impleadment of his client in these proceedings submitting that his client had nothing to do with the bills raised by the petitioner on the society and that his client was the erstwhile contractor. He, therefore, seeks that his client be deleted from the array of parties.

8. Responding to the submissions, Mr. Prabhat has pointed out that the arbitration clause specifically envisages arbitration by consent of all three parties to the agreement.

9. In view of the fact that the arbitration clause specifically envisages consent of all three parties to the agreement and Respondent No. 3 is one of the three parties to the agreement, no fault can be found in the petitioner impleading Respondent No.3 in these proceedings. Indeed, had the petitioner not impleaded Respondent No.3, the petition itself may not have been maintainable.

10. No other objection, to the referring of the disputes to arbitration, has been raised by the parties.

11. In view thereof, the disputes between the parties are referred to arbitration. This Court appoints Ms. Smriti Sinha, learned Advocate (Mobile Number: +91 9818199498 and E-mail ID : smriti@sinhalaw.com) as the Arbitrator to adjudicate on the disputes.

12. The learned Arbitrator would be entitled to charge fees in accordance with the Fourth Schedule to the 1996 Act or as otherwise fixed by the arbitrator in consultation with the parties.

13. The learned Arbitrator is also requested to submit the requisite disclosure under Section 12(2) of the 1996 Act within a week of entering on reference.

14. All contentions of the parties are left open and may be agitated before the learned Arbitral Tribunal.

15. This petition stands allowed in the aforesaid terms with no orders as to costs.

C. HARI SHANKAR, J

OCTOBER 6, 2021/kr