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

% ***Date of decision: 26.09.2022***

\+ FAO(OS) (COMM) 259/2022

ROYAL ORCHIDS ..... Appellant

Through: Mr.Mandeep Singh Vinaik, Mr.Deepak Bashta, Ms.Geeta Mohanty, Mr.Pawan Kumar Dhimra & Ms.Ragini Vinaik, Advs.

versus

KULBIR SINGH KOHLI & ANR. ..... Respondents

Through: Mr.Kunal Tandon, Mr.Jaspreet Singh Kapur & Mr.Manu Abhishek Bhardwaj, Advs.

CORAM:

HON'BLE MR. JUSTICE SURESH KUMAR KAIT
HON'BLE MR. JUSTICE SAURABH BANERJEE

J U D G M E N T ***(oral)***

1. The present appeal has been filed by the appellant under Section 37(1)(b) of the Arbitration and Conciliation Act, 1996 challenging the judgment dated 23.08.2022 passed by learned Single Judge in OMP (I) (COMM) 192/2022, vide which petition under Section 9 of the Arbitration and Conciliation Act, 1996 filed by the respondents has been dismissed.

2. Appellant is a business entity which has common management with

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Aero Club, known as Woodland Group. Over the last few decades, appellant has been involved in and has successfully undertaken several construction and infrastructure development projects in and around the National Capital Region of Delhi.

3. Respondent nos.1 & 2 are spouses and are the co-owners of a plot of land and in possession of freehold property bearing number K-1, built on plot no.1, in K block, situated in the area of Village Basai Darapur, Rajouri Garden, New Delhi.

4. Learned counsel for the appellant submits that in February, 2022, appellant was approached by the respondents seeking a collaboration with the appellant to construct and develop the project on their abovementioned land. On 03.03.2022, parties entered into a Memorandum of Understanding in terms of which the project had to be developed by the appellant at its own cost in lieu of being paid 30% of the Sale proceeds. The appellant mobilised its resources in order to fulfill its obligations in a timely manner and as part of the planning process, refused other projects. An advance of Rs.1 crore was paid to the respondents and the remaining part of the deposit was ready and available with the appellant to deposit to the respondents.

5. Learned counsel also submits that appellant sent a show cause notice

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to the respondentS on 27.05.2022 to fulfil their obligations under the Memorandum of Understanding. In response thereto, respondents also send a notice to the appellant seeking cancellation of the above said agreement.

6. Learned counsel for appellant next submits that in light of disputes and differences that arose between the appellant and the respondents, the appellant petitioner vide Notice of Arbitration dated 04.06.2022 invoked arbitration in accordance with Clause 21 of the Memorandum of Understanding.

7. Thereafter appellant filed a petition under Section 9 of the Arbitration and Conciliation Act, 1996 on 06.06.2022 and vide order dated 23.08.2022, the same was dismissed by learned Single Judge. Hence, the present appeal.

8. Learned counsel appearing on behalf of the respondents has submitted that the claims raised in the present appeal are disputed, however, fairly conceded that the disputes *inter se* parties are arbitrable.

9. Learned counsel for the appellant submits that though he has not filed a petition under Section 11 of the Arbitration and Conciliation Act, 1996, he has no objection if this Court appoints an independent arbitrator. Learned counsel for the respondents also has no objection to the same.

10. Accordingly, we hereby appoint **Hon'ble Mr. Justice KG**

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Balakrishnan, former Chief Justice of India (Mobile: 9717266700) the sole arbitrator to adjudicate the disputes between the parties.

11. The fee of the learned Arbitrator shall be governed by the Fourth Schedule of the Arbitration and Conciliation Act, 1996.

12. The learned Arbitrator shall ensure compliance of Section 12 of the Arbitration and Conciliation Act, 1996 before commencing the arbitration.

13. With aforesaid, the present appeal is disposed of accordingly.

(SURESH KUMAR KAIT)
JUDGE

(SAURABH BANERJEE)
JUDGE

SEPTEMBER 26, 2022/ab

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