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

+ ARB.P. 386/2024

M/S COLLIERS INTERNATIONAL INDIA
PROPERTY SERVICES PVT. LTD

..... Petitioner

Through: Mr. Dhruv Rohatgi and Ms. Shruti
V. Biswas, Advocates.

versus

M/S TARC LIMITED & ANR.

..... Respondents

Through: Mr. Soham Kumar, Ms. Prarthana
Singhania, Mr. Akshit Navaney
and Ms. Himali Chaudhary,
Advocates for R-2.

CORAM:

HON'BLE MR. JUSTICE PRATEEK JALAN

ORDER

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01.05.2024

1. By way of this petition, under Section 11 of the Arbitration and Conciliation Act, 1996, the petitioner seeks appointment of an arbitrator to adjudicate disputes between the petitioner and respondent No. 2 under an agreement dated 18.12.2021 entitled "Contractor Appointment Agreement."

2. The agreement dated 18.12.2021 contains an arbitration clause [Clause 32] which provides for arbitration by a panel of three arbitrators. New Delhi has been designated as the venue of the arbitration and Courts in New Delhi have been vested with jurisdiction.

3. Mr. Dhruv Rohatgi, learned counsel for the petitioner, submits that the petitioner has invoked the arbitration clause by a legal notice dated

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01.08.2023, to which no response has been received. In the said notice, having regard to the quantum of the existing disputes, the petitioner has sought the concurrence of respondent No.2 to appoint a sole arbitrator mutually, but failing concurrence, the petitioner has also nominated its nominee arbitrator to serve on the arbitral tribunal.

4. In the order dated 19.03.2024, it was recorded as follows:

“2. Prior to the petitioner and respondent No. 2 entering into the said agreement, the petitioner had entered into a similar agreement on 14.10.2021 with respondent No. 1, which is stated to be the holding company of the respondent No. 2. During the subsistence of that agreement, it is contended by the petitioner that the petitioner was asked to enter into a similar agreement with respondent No. 2, which would take over all responsibilities and liabilities in respect of the transactions between the parties.

3. In these circumstances, although both agreements have been referred to in the petition, Mr. Dhruv Rohtagi, learned counsel for the petitioner, makes it clear that, according to the petitioner, the arbitration proceedings would now be between the petitioner and respondent No. 2 under the agreement dated 18.12.2021.”

5. Mr. Soham Kumar, learned counsel, enters appearance on behalf of respondent No.2, pursuant to notice issued on 19.03.2024, and submits that respondent No.2 has no objection to the disputes being referred to arbitration of a sole arbitrator, but that an attempt may be made to settle the disputes in mediation. Mr. Rohatgi states that the petitioner is also agreeable to the same.

6. Having regard to the above submissions, and with the consent of learned counsel for the parties, the petition is disposed of with the following directions:

a. Petitioner and respondent No.2 are referred to mediation under the aegis of Samadhan, Delhi High Court Mediation and



Conciliation Centre, Shershah Road, New Delhi-110503.

- b. They will appear before the learned Mediator on 08.05.2024.
- c. In the event the mediation proceedings are unsuccessful, the disputes between the petitioner and respondent No.2 will be adjudicated by arbitration of Hon'ble Mr. Justice Jayant Nath, former Judge of this Court [Tel: 8527959494]. The arbitration will be held under the aegis of Delhi International Arbitration Centre, Delhi High Court, Shershah Road, New Delhi ["DIAC"].
- d. The arbitration proceedings will be governed by the Rules of DIAC, including as to remuneration of the learned Arbitrator.
- e. The learned Arbitrator is requested to furnish a declaration under Section 12 of the Act, prior to entering upon the reference.
- f. DIAC is requested to defer the proceedings for a period of eight weeks from today, to enable the parties to resolve their disputes through mediation. The learned Arbitrator is requested to enter into reference after a period of eight weeks, upon request of either party.

7. It is made clear that all rights and contentions of the parties are left open for adjudication by the learned Arbitrator.

PRATEEK JALAN, J

MAY 1, 2024/ SS/