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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **ARB.P. 391/2024**

S. AMARJIT SINGH

..... Petitioner

Through: Mr. Sanjay Sehgal, Adv.
versus

S. GURBAKSH SINGH

..... Respondent

Through: Appearance not given.

CORAM:
JUSTICE PRATHIBA M. SINGH

% **ORDER**
27.03.2024

1. This hearing has been done through hybrid mode.
2. The present petition under Section 11(6) of the Arbitration and Conciliation Act, 1996 arises out of a collaboration agreement dated 18th December, 2022 executed between the parties in respect of construction of the property bearing No. S-11, Ajay Enclave, New Delhi-110018
3. The parties had entered into a collaboration agreement and as per the Petitioner, the entire second floor was to be vested with the Petitioner.
4. Pursuant to this agreement, the Petitioner has received a sum of Rs.23,60,000/- and the allegation is that disputes have arisen between the parties as Mr. Gurbaksh Singh stopped the construction work.
5. Respondent is stated to have paid a sum of Rs.23,60,000/- for rights in the second floor and it is the case of the Respondent that the Petitioner has not executed the sale deed. The Respondent has sent a legal notice dated 18th October, 2023 to the Petitioner to comply with the terms of the agreement.



However, since there was no response from the Petitioner, the Respondent, accordingly, invoked the arbitration on 27th January, 2024.

6. No reply was sent by the Petitioner to the said notice. However, the Petitioner has chosen to file the present petition.

7. The arbitration clause in this case is given under Clause 29 of the Collaboration Agreement dated 18th December, 2022, the same reads as under:

*“29. That all disputes and differences that may arise between the parties hereto relating to or in connection with the matter of this agreement or between the parties or their representatives shall be referred to the sole and final arbitration of 1) **SHRI MANOJ TALWAR** (AADHAAR CARD NO.573389068863)SON OF SHRI RAJ KUMAR, RESIDENT OF RZ-L/8, BLOCK-L, SHYAM PARK, NAWADA, UTTAM NAGAR, NEW DELHI-110059 AND 2) **SHRI ROHIT DHAWAN** (AADHAAR CARD NO.268305927572)SON OF SHRI BALDEV RAJ, RESIDENT OF A-37, FIRST FLOOR, BLOCK-A, ANAND VIHAR, UTTAM NAGAR, NEW DELHI- 110059, that in case any dispute remains unresolved between both the parties regarding the said agreement/ property/transaction the matter shall be referred to the competent court of Delhi jurisdiction.”*

8. The two named Id. Arbitrators who have entered reference vide notice dated 27th January, 2024 have also issued notice to the Petitioner. In the said arbitral proceedings, the Petitioner has filed an application alleging that the constitution of the Arbitral Tribunal is not valid. Notice was issued in this case on the question of maintainability and it was also recorded that this may be an appropriate case where an independent Arbitrator would have to be appointed.



9. Ld. Counsel for the Respondent has entered appearance. He submits that the two named Arbitrators were included in the arbitration clause at the instance of the Petitioner. The said two named Arbitrators, as per submissions, appear to have been the brokers through whom the transactions itself have been entered into. Under such circumstances, the said named arbitrators would be clearly ineligible to be appointed, in view of Section 12(5) read with the 7th Schedule of the Arbitration and Conciliation Act, 1996.

10. Under such circumstances, in view of the decision in ***Perkins Eastman Architects DPC & Anr. v. HSCC (India) Ltd., Ltd., 2019 SCC OnLine Sc 1517***, as also the subsequent rulings of this Court and the Supreme Court, the Court deems it appropriate to appoint an independent Arbitrator in this matter. However, ld. Counsels for the parties, at this stage, submit that they are also willing to explore an amicable resolution. Considering the above facts and circumstances, the following directions are issued:

- i. **Mr. R. K. Joshi, Advocate [M:9811086445]** who is present in the Court is appointed as a sole Arbitrator in this matter to adjudicate the disputes between the parties.
- ii. The Arbitration proceedings shall take place under the aegis of the Delhi International Arbitration Centre (*hereinafter, DIAC*). The arbitration proceedings shall be conducted under the rules of the DIAC. The fee of the ld. Sole Arbitrator shall be as per the Fourth Schedule of the Arbitration and Conciliation Act, 1996 as amended by the DIAC. Parties to appear before the ld. Arbitrator in the DIAC on 20th May, 2024.
- iii. In the meantime, since the parties wish to amicably resolve the matter, they are permitted to appear before the Delhi High Court



Mediation and Conciliation Centre on 4th April, 2024 at 3:00 p.m.

11. The Id. Mediator shall conduct the mediation proceedings expeditiously considering the next date before the Id. Arbitrator. If the mediation does not fructify, the Id. Arbitrator shall proceed in accordance with law.

12. List before Mediation Centre on 4th April, 2024 at 3:00 p.m.

13. List before the DIAC on 20th May, 2024. Let a copy of the present order be emailed to Secretary, DIAC on email id- delhiarbitrationcentre@gmail.com.

14. Accordingly, the petition is disposed of. Pending applications, if any, are also disposed of.

PRATHIBA M. SINGH, J

MARCH 27, 2024

dj/rks