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

+ **ARB.P. 417/2024**

**PREMIER CHENNAI PROPERTIES PRIVATE LIMITED**

..... Petitioner

Through: Ms Bani Dikshit and Mr Uddhav  
Khanna, Advs.

versus

**PACIFICA BUILDERS PRIVATE LIMITED** ..... Respondent

Through: Mr Akshay Makhija, Sr. Adv. with  
Mr Anirudh Sharma, Mr Sanjeev  
Kumar Sharma, Mr Ritvik Bhanot,  
Mr Rajiv Dalal, Mr Ajay and Ms  
Dipti Singh, Advs.

**CORAM:**

**HON'BLE MR. JUSTICE JASMEET SINGH**

**ORDER**

**29.05.2024**

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1. This is a petition under Section 11(6) of the Arbitration & Conciliation Act, 1996 seeking appointment of a sole Arbitrator for adjudication of disputes pending between the parties.

2. The facts of the case are that the petitioner and the respondent entered into a Joint Development Agreement ("JDA") and several other supplementary agreements for construction of residential flats, commercial complex and amenities on land admeasuring 84 acres 2 cents collectively owned by the petitioner and the respondent. The disputes between the parties arise from *inter alia* (a) delay in completion of construction and development of the Project and (b) revenue share payments due to the



petitioner from the respondent under the JDA. Due to delay in completion of the project, the petitioner issued a default notice to the respondent on 16.05.2023. The said notice was responded by the respondent on 30.05.2023 and thereafter, since the disputes were not settled, the petitioner invoked arbitration on 16.06.2023. As the disputes are still pending, the petitioner has filed the present petition.

3. Notice was issued and even though a reply is stated to have been filed, the same is not record. A physical copy has been handed over in Court today and is taken on record.

4. The only objection raised by the respondent is that the petitioner has not made all the parties to the arbitration agreement as parties in the present petition.

5. Mr Makhija, learned senior counsel appearing for the respondent states that Mr K.C.P. Shivraman, Mr. K.C. Pallanishamy, Pallanishamy Builders Private Ltd. are all individuals/entities who have stake in the project signed the arbitration agreement and should have been impleaded as parties to the present petition. He further states that in case the respondent has any claims against these three individuals/entities, he will have to file a separate petition which will involve multiplicity of proceedings and hence, the present petition should not be entertained at this stage without impleading the three persons/entities as parties.

6. I have heard learned counsels for the parties.

7. In the present case, the respondent in its response dated 04.02.2024 being a response to the letter dated 04.02.2024 of the petitioner categorically states as under:

*“6. In light of the above, due to the ineffective attempts of*



*arriving at mutual agreement, and due to the unreasonable and illegal means adopted by “PCPL” for obtaining the escrow documents, “Pacifica” hereby confirms acceptance of the Default Notice, and further raise counter dispute regarding the live issues and disputes under **Clause 21** of the JDA and express our commitment to participate in the arbitration proceedings.”*

8. Hence, the above paragraph shows that the respondent was agreeable to participate in the arbitral proceedings proposed to be initiated by the petitioner (even though the letter also raised an objection regarding the non-impleadment of all the parties).

9. Clause 24.7 of the 5<sup>th</sup> Amendment Agreement contains the Arbitration Clause which reads as under:

*“24.7 It is clarified that only the disputing Parties against whom any reliefs or counter-reliefs are sought shall be made parties to any arbitration proceedings, suit or other proceedings and any award, order or passed in such proceedings shall be binding and valid, without the non-necessary Party/ies being made a party to such proceedings.”*

10. Clause 24.7 reproduced above is important as it clarifies that only parties against whom any reliefs or counter reliefs are sought to be made, shall be made parties to the arbitration proceedings.

11. Ms Dikshit, learned counsel appearing for the petitioner states that the petitioner has claims only against the respondent and does not have any claims against Mr K.C.P Shivraman, Mr. K.C. Pallanishamy, Pallanishamy Builders Private Ltd. in view of deeds of exchange and relinquishment deed wherein they have relinquished their shares in the subject land in favour of



the petitioner and the respondent.

12. For the said reasons and in view of the fact that the arbitration agreement is admitted between the parties, I am inclined to allow the petition. Since the parties are still having disputes between them, the following directions are issued:-

- i) Justice S. Ravindra Bhat (Retd. Supreme Court Judge) (Mob. No. 9818000160) is appointed as a Sole Arbitrator to adjudicate the disputes between the parties.
- ii) The arbitration will be held under the aegis of the Delhi International Arbitration Centre, Delhi High Court, Sher Shah Road, New Delhi hereinafter, referred to as the 'DIAC'). The remuneration of the learned Arbitrator shall be in terms of the Fourth Schedule of the Arbitration & Conciliation Act, 1996.
- iii) The learned Arbitrator is requested to furnish a declaration in terms of Section 12 of the Act prior to entering into the reference.
- iv) It is made clear that all the rights and contentions of the parties, including as to the arbitrability of any of the claim, any other preliminary objection, as well as claims on merits of the dispute of either of the parties, are left open for adjudication by the learned arbitrator.
- v) The parties shall approach the learned Arbitrator within two weeks from today.
- vi) Needless to add that in case the respondent has any claims against any other three parties, the respondent will always be at liberty to initiate appropriate legal proceedings in this regard.



13. The petition is allowed and disposed of in the aforesaid terms.

**JASMEET SINGH, J**

**MAY 29, 2024**

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*[Click here to check corrigendum, if any](#)*