



2024:DHC:6728



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**+ **ARB.P. 483/2024****BIRENDER KUMAR**

.....Petitioner

Through: Ms. Vrinda Bhandari, Ms.
Vanshita Gupta, Ms. Pragya and Ms.
Anandita Rana, Advs. (DHCLSC)

versus

IMPERIA STRUCTURES LTD.

.....Respondent

Through: Mr. Tushar Sharma, Adv.

CORAM:**HON'BLE MR. JUSTICE C. HARI SHANKAR****ORDER (ORAL)**

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30.08.2024

1. This is a petition under Section 11(6) of the Arbitration and Conciliation Act, 1996¹, seeking reference of the dispute between the parties to arbitration.

2. The petitioner and respondent entered into a Developer-Investor Agreement/Memorandum of Understanding² dated 20 October 2015 for purchase of a plot admeasuring 300 sq. ft. in the respondent's cyber business centre project situated in Plot 44-45, KP 5, Greater Noida for ₹ 15,75,000/-

3. The arbitration clause contained in the Developer-Investor Agreement (MOU) reads thus:

“ARBITRATION

¹ “the 1996 Act”, hereinafter

² “MOU” hereinafter



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- a. That any dispute in the interpretation of any clause of this Memorandum of Understanding shall be referred to the sole arbitration of an Arbitrator to be nominated by the developer whose decision shall be final and binding on both the parties. All the arbitration proceedings shall be carried out in terms of the Arbitration and Conciliation Act, 1996, at New Delhi.
- b. Two copies of the Memorandum of Understanding have been prepared, one to be retained by the Developer and other to be retained by the Investor
- c. This Memorandum of Understanding is executed at New Delhi and Courts in New Delhi alone will have the exclusive jurisdiction over this Memorandum of Understanding to the exclusion of all other courts and Memorandum of Understanding shall be set to and construed in accordance with the laws of India.”

4. Disputes surfaced. The petitioner *vide* notice dated 23 February 2024 under section 21 of the 1996 Act, invoked arbitration. The said notice also mentioned the grievance/objection of the petitioner with respect to the unilateral appointment contained in the arbitration clause by the respondent. The notice also requested the respondent to give consent on the name of the arbitrators suggested by the petitioner from the panel of DIAC within 30 days of the receipt of section 21 notice.

5. The respondent failed to reply.

6. The petitioner has accordingly moved this court under section 11(6) of the 1996 Act for reference of the disputes to arbitration.

7. Though, the arbitration clause envisages arbitration by an arbitrator to be nominated by the respondent, the said arrangement is not workable in view of the judgments of the Supreme Court in the

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case of *Bharat Broadband Network Ltd v United Telecoms Ltd*³, *Perkins Eastman Architects DPC v HSCC (India) Ltd*⁴ and *Haryana Space Application Centre (HARSAC) v Pan India Consultants Pvt Ltd*⁵.

8. Learned Counsel for the respondent has no objection to the dispute being referred to arbitration. The claim amount is stated to be only a little over ₹ 4.3 lakhs.

9. Accordingly, the dispute is referred to the DIAC which will appoint a suitable arbitrator to arbitrate on the dispute between the parties.

10. The arbitration shall take place under the aegis of the DIAC and shall abide by its rules and regulations.

11. The arbitrator shall be entitled to charge fees as per the schedule of fees maintained by the DIAC.

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

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

C.HARI SHANKAR, J

AUGUST 30, 2024/aky

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

³(2019) 5 SCC 755

⁴(2020) 20 SCC 760

⁵(2021) 3 SCC 103

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