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

+ **ARB.P. 967/2024**

UMARTH DEVELOPERS PRIVATE LIMITEDPetitioner

Through: Mr. Shaunak Dutta & Mr. Suhail
Malik, Advocates.

versus

VIJAY KUMAR & ORS.Respondents

Through: Respondent No.1 in person (through
video-conferencing)

CORAM:

HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

ORDER

04.10.2024

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1. This is a petition under Section 11(6) of the Arbitration & Conciliation Act for appointment of an Arbitrator.
2. It is stated that the present dispute arises out of a Collaboration Agreement entered into between the Petitioner, who is the developer, and the Respondents, who are the owners of the property being E-54, Greater Kailash Enclave-II, New Delh-48.
3. It is the case of the Petitioner that out of a sum of Rs.1.46 crore which is the subject matter of the Collaboration Agreement, a sum of Rs.60 lakh has been advanced by the Petitioner to the Respondents. It is stated that despite regular promises, the Respondents have not complied with their obligations under the Collaboration Agreement and that time was mutually extended.
4. It is stated that the Collaboration Agreement contains an arbitration



clause. Clause 42 of the Collaboration Agreement reads as under:-

“42. That in case of any disputes, differences arising out of implementation or interpretation of this agreement and/or touching this agreement from any quarter, the same shall be mutually settled, failing which the dispute shall be referred to the mutually appointed arbitrator as per Indian Arbitration & Conciliation Act, 1996 and decision of the arbitrator will be final and binding on both the parties.”

5. Respondent No.1, who appears in person through video-conferencing, states that he has no objections for appointment of an Arbitrator.

6. The learned Counsel for Respondents No.2 and 3 states that the invocation of arbitration proceedings is time barred because the Collaboration Agreement was entered into between the parties in the year 2013 and after 11 years of the said agreement, the Petitioner cannot be permitted to invoke the arbitration proceedings. He also states that the company was struck off from the period of 2014-19 and therefore there is no question of any extension of time for the Petitioner for the company which did not exist between 2014-19.

7. The question as to whether the invocation of arbitration proceedings by the Petitioner is time barred or not is for the Arbitrator to decide. The Apex Court in Vidya Drolia & Ors. v. Durga Trading Corporation, (2021) 2 SCC 1, has observed as under:-

“148. Section 43(1) of the Arbitration Act states that the Limitation Act, 1963 shall apply to arbitrations as it applies to court proceedings. Sub-section (2) states that for the purposes of the Arbitration Act and Limitation Act, arbitration shall be deemed to have commenced on the date referred to in Section 21.



Limitation law is procedural and normally disputes, being factual, would be for the arbitrator to decide guided by the facts found and the law applicable. The court at the referral stage can interfere only when it is manifest that the claims are ex facie time-barred and dead, or there is no subsisting dispute. All other cases should be referred to the Arbitral Tribunal for decision on merits. Similar would be the position in case of disputed “no-claim certificate” or defence on the plea of novation and “accord and satisfaction”. As observed in Premium Nafta Products Ltd. [Fili Shipping Co. Ltd. v. Premium Nafta Products Ltd., 2007 UKHL 40 : 2007 Bus LR 1719 (HL)] , it is not to be expected that commercial men while entering transactions inter se would knowingly create a system which would require that the court should first decide whether the contract should be rectified or avoided or rescinded, as the case may be, and then if the contract is held to be valid, it would require the arbitrator to resolve the issues that have arisen.”

8. In view of the above, this Court is inclined to appoint Mr. Siddharth Sharma, Adv. (Mob. No.7400111111) as a Sole Arbitrator to adjudicate upon the disputes between the parties.
9. The arbitration would take place under the aegis of the Delhi International Arbitration Centre (DIAC) and would abide by its rules and regulations. The learned Arbitrator shall be entitled to fees as per the Schedule of Fees maintained by the DIAC.
10. The learned Arbitrator is also requested to file the requisite disclosure under Section 12(2) of the 1996 Act within a week of entering on reference.
11. All rights and contentions of the parties in relation to the claims/counter-claims are kept open, to be decided by the learned Arbitrator on their merits, in accordance with law.



12. Needless to say, nothing in this order shall be construed as an expression of this Court on the merits of the contentions of the parties.

13. The petition is disposed of along with pending application(s), if any.

SUBRAMONIUM PRASAD, J

OCTOBER 4, 2024

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