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

+ **O.M.P.(I) (COMM.) 306/2022**

EVIE COMMERCIAL ASSETS PVT. LTD.Petitioner

Through: **Mr. Parthasarathy Bose, Advocate.**

versus

COLLAGE ESTATES PVT. LTD.Respondent

Through: **Mr. Satish Rai, Ms. Medha
Pandey, Advocates.**

**CORAM:
HON'BLE MR. JUSTICE PRATEEK JALAN**

ORDER

% **07.08.2024**

1. The petitioner has filed this petition under Section 9 of the Arbitration and Conciliation Act, 1996 [“the Act”], seeking interim measures of protection in anticipation of arbitration proceedings under an Agreement dated 28.08.2019 [“the Agreement”] between the parties.
2. The Agreement contains an arbitration clause [Clause 13], which provides for adjudication of disputes by a sole arbitrator. Delhi has been designated as the seat and venue of arbitration. Under Clause 12, Courts in Delhi have also been vested with exclusive jurisdiction under the Agreement.
3. Although notice was issued in this petition on 02.11.2022, no *ad-interim* relief was granted.
4. The petitioner has also taken no steps for constitution of the arbitral



tribunal, although arbitration was invoked by its letter dated 09.09.2022.

5. In these circumstances, I am of the view that the proper course would be to constitute the arbitral tribunal, and for this petition to be treated as an application under Section 17 of the Act before the learned arbitrator. Learned counsel on both sides are agreeable to this course of action being adopted in these proceedings itself.

6. Consequently, the petition is disposed of by referring the disputes between the parties under the Agreement dated 28.08.2019 to the arbitration of Hon'ble Mr. Justice Sanjay Kishan Kaul, former Judge, Supreme Court of India [Tel: 9818900370]. The learned Arbitrator is requested to furnish a declaration under Section 12 of the Act, prior to entering upon the reference.

7. The arbitration will be held under the aegis of Delhi International Arbitration Centre, Delhi High Court, Shershah Road, New Delhi ["DIAC"], and will be governed by the Arbitration Rules of DIAC. The remuneration of the learned Arbitrator may be fixed by the learned arbitrator in consultation with the parties, in terms of the judgment of the Supreme Court in *ONGC Ltd. v. Afcons Gunanusa JV*, [(2024) 4 SCC 481].

8. This petition will be treated as an application under Section 17 of the Act. The entire record of this petition will be placed before the learned Arbitrator by learned counsel for the parties. They may request the learned Arbitrator for an expeditious hearing of the Section 17 application.

9. All rights and contentions of the parties are left open for adjudication by the learned arbitrator. It is made clear that this Court has



not made any comment thereupon, even on a *prima facie* basis.

10. The petition is disposed of, in terms of the aforesaid.

PRATEEK JALAN, J

AUGUST 7, 2024

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