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IN THE HIGH COURT OF DELHI AT NEW DELHI

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ARB.P. 1234/2022

SANGA BUILDERS PRIVATE LIMITED

..... Petitioner

Through: Mr. Naman Maheshwari, Advocate
via video-conferencing with Ms.
Akanksha Kapoor and Ms. Sneha,
Advocates.

versus

ARMY WELFARE HOUSING ORGANISATION & ANR.

..... Respondents

Through: Mr. A.K. Tiwari, Adv. for R-1.
Mr. Nizam Pasha and Mr. Siddharth
Kaushik, Advocate for R-2.

CORAM:

HON'BLE MR. JUSTICE ANUP JAIRAM BHAMBHANI

ORDER

22.02.2024

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By way of the present petition under section 11 of the Arbitration & Conciliation Act 1996 ('A&C Act' for short), the petitioner seeks appointment of an arbitrator to adjudicate upon the disputes that are stated to have arisen with the respondents from Memorandum of Understanding dated 28.05.2007 ('MoU').

2. Ms. Akanksha Kapoor, learned counsel for the petitioner has drawn the attention of this court to clause 18 which comprises the arbitration agreement between the parties; and contemplates reference of disputes between them to arbitration in accordance with the A&C Act; with arbitration to be held at New Delhi.
3. As per the record, the petitioner invoked arbitration *vide* Notice dated 13.09.2021; to which respondent No. 1 sent reply dated 09.12.2021 and respondent No. 2 sent replies dated 24.12.2021 and 28.02.2022.



4. Notice on this petition was issued on 10.11.2022; consequent to which the respondents have filed their replies dated 04.01.2023 and 07.02.2023 respectively.
5. Though the matter has been pending for some time, Ms. Kapoor appearing for the petitioner, and Mr. A.K. Tiwari, learned counsel appearing for respondent No. 1 as well as Mr. Nizam Pasha, learned counsel appearing for respondent No. 2 submit, that they are agreeable for their *inter-se* disputes *arising from Memorandum of Understanding dated 28.05.2007 (only)*, relating to a project at Jaipur, Rajasthan, be referred to the sole arbitration of Hon'ble Mr. Justice Madan B. Lokur, former Judge of the Supreme Court of India.
6. Mr. Pasha submits, that it may be clarified that the reference was being made is *only* in relation to the disputes that are stated to have arisen from Memorandum of Understanding dated 28.05.2007.
7. Upon a conspectus of the averments contained in the petition and the submissions made, this court is satisfied that there is a valid and subsisting arbitration agreement between the parties; that this court has territorial jurisdiction to entertain and decide the present petition; and also that the disputes that are stated to have arisen between the parties as set-out *inter-alia* in invocation notice dated 13.09.2021 do not appear *ex-facie* to be non-arbitrable.
8. Accordingly, the present petition is allowed and by consent of parties, **Hon'ble Mr. Justice Madan B. Lokur, former Judge of the Supreme Court of India (Cellphone No.: +91 9868219007)** is appointed as the learned Sole Arbitrator to adjudicate upon the disputes between the parties.



9. As requested, it is clarified that the present reference is *only* in relation to disputes that are stated to have arisen from Memorandum of Understanding dated 28.05.2007.
10. The learned Sole Arbitrator may proceed with the arbitral proceedings subject to furnishing to the parties requisite disclosures as required under section 12 of the A&C Act; and in the event there is any impediment to the appointment on that count, the parties are given liberty to file an appropriate application in this court.
11. The learned Sole Arbitrator shall be entitled to fee in accordance with Fourth Schedule to the A&C Act; or as may otherwise be agreed to between the parties and the learned Sole Arbitrator.
12. Parties shall share the arbitrator's fee and arbitral costs, equally.
13. All rights and contentions of the parties in relation to the claims/counter-claims are kept open, to be decided by the learned Sole Arbitrator on their merits, in accordance with law.
14. Parties are directed to approach the learned Sole Arbitrator appointed within 15 days.
15. A copy of this order be communicated by the Registry to the learned Sole Arbitrator.
16. The petition stands disposed of in the above terms.
17. Other pending applications, if any, also stand disposed of.

ANUP JAIRAM BHAMBHANI, J

FEBRUARY 22, 2024

V.Rawat