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

+ ARB.P. 1232/2023

RESHMA KAPUR & ANR.

..... Petitioners

Through: Ms. Suneha Jain, Advocate *via* video-conferencing.

versus

KAD HOUSING PVT LTD & ANR.

..... Respondents

Through: Mr. Kamal Kapoor, Advocate.

CORAM:

HON'BLE MR. JUSTICE ANUP JAIRAM BHAMBHANI

ORDER

12.03.2024

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By way of the present petition filed under section 11 of the Arbitration & Conciliation Act 1996 ('A&C Act'), the petitioners seek appointment of a Sole Arbitrator to adjudicate upon the disputes that are stated to have arisen with the respondent from Settlement Agreement dated 07.02.2017 ('Agreement').

2. Notice on this petition was issued on 23.11.2023. Though time was sought for filing reply, no reply is forthcoming till date.
3. Ms. Suneha Jain, learned counsel for the petitioners has drawn the attention of this court to clause 9 of the Agreement which comprises the arbitration agreement; and contemplates reference of disputes between the parties to arbitration in accordance with the A&C Act; with the 'place' and 'seat' of arbitration being at New Delhi; while also subjecting the Agreement between the parties to the jurisdiction of competent courts at Delhi.
4. As per the record, the petitioners have invoked arbitration *vide* Notice dated 27.03.2023; to which the respondents have not sent any reply.



5. That being said, Mr. Kamal Kapoor, learned counsel appearing for the respondents submits that they are not averse to the disputes between the parties being referred to a Sole Arbitrator under the aegis of Delhi International Arbitration Centre, New Delhi ('DIAC'); however keeping the respondents' objections open, including their objection that the claims sought to be raised are time-barred.
6. Learned counsel for the parties point-out that in a connected matter, where the claimant is different but the non-claimants (respondents in the present matter) are the same, arbitration proceedings are pending before Mr. Devashish Bharuka, Senior Advocate.
7. In view of the above, learned counsel for the parties jointly request that this court may appoint Mr. Bharuka as the learned Sole Arbitrator; and then refer the matter for arbitration under the aegis of the DIAC, keeping all their respective factual and legal contentions open.
8. Upon a conspectus of the averments contained in the petition, the stand taken by the respondents, 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 parties, as set-out *inter-alia* in invocation notice dated 27.03.2023, do not appear *ex-facie* to be non-arbitrable.
9. Accordingly, the present petition is allowed and by consent of parties, **Mr. Devashish Bharuka, Senior Advocate (Cellphone No.: +91 9810517287)** is appointed as the learned Sole Arbitrator to adjudicate



upon the disputes between the parties; with arbitration proceedings to be conducted under the aegis of the DIAC, in accordance with applicable rules.

10. The learned Sole Arbitrator would furnish 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 then proceed with the arbitral proceedings in accordance with the rules and regulations of DIAC and subject to arbitrator's fee and arbitration costs, as may be applicable.
12. All rights and contentions of the parties in relation to the claims/counter-claims, in particular, the objection taken by the respondents that the claims are time-barred, are kept open to be decided by the learned Sole Arbitrator on merits, in accordance with law.
13. A copy of this order be communicated *forthwith* to the Co-ordinator, DIAC, for information and compliance.
14. A copy of this order be communicated by the Registry *via* e-mail to the learned Sole Arbitrator, as also to learned counsel for the parties.
15. The petition stands disposed-of in the above terms.
16. Pending applications, if any, also stand disposed-of.

ANUP JAIRAM BHAMBHANI, J

MARCH 12, 2024/V.Rawat