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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **ARB.P. 1322/2023**
M/S GTL INFRASTRUCTURE LTD. Petitioner
Through: Mr. Swetank Shantanu, Ms. Aanchal
Tiwari, Mr. Pratap Shanker, Adv.
Versus

MR. ASHOK BUDHIRAJA SINCE DECEASED THROUGH LRS
SMT. USHA BUDHIRAJA AND ANR. Respondents

Through: Mr. Aditya Singh, Adv.(VC)

CORAM:
HON'BLE MR. JUSTICE DINESH KUMAR SHARMA

ORDER
29.02.2024

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1. By way of the present petition filed under Section 11(6) of the Arbitration and Conciliation Act, 1996 (hereinafter, referred to as the 'A&C Act'), the petitioner seeks appointment of Arbitral Tribunal comprising of a Sole Arbitrator to adjudicate the disputes between the parties. A License Agreement dated 23.03.2009 were executed between the Mr. Ashok Budhiraja (deceased) and M/s Aircel Ltd. (predecessor in business). It is submitted that the Clause-11 of said License Agreement contains an arbitration clause with the jurisdiction at Delhi.
2. Learned counsel submits that subsequently, M/s Aircel Ltd. was transferred to Chennai Network Infrastructure Ltd. It has been submitted that Chennai Network Infrastructure Ltd. was further merged with the present petitioner i.e. M/S GTL Infrastructure Ltd. Learned counsel submits that two supplementary agreement dated



23.08.2014 and 02.12.2014 were executed between late Sh. Ashok Budhiraja and Chennai Network Infrastructure Ltd. The copy of the order of merger scheme dated 16.06.2010 has also been placed on the record.

3. Learned counsel submits that the present respondents are the legal heirs of the late Sh. Ashok Budhiraja. Learned counsel submits that the petitioner is in the business of erecting towers and late Sh. Ashok Budhiraja provided roof for the erection of the towers. Learned counsel submits that till late Sh. Ashok Budhiraja was alive there was no dispute however, after the death of late Sh. Ashok Budhiraja, the respondents started creating hindrance in the access to the tower. The respondents also started demanding enhanced rent in terms of first principal agreement. Learned counsel submits that he had filed a petition under Section 9 of the Arbitration and Conciliation Act before the District Judge- 01, Commercial Court-01, Sahadara Court Karkardooma, New Delhi. After the service of this suit, the respondents terminated the license agreement.
4. Learned counsel for the petitioner submits that in pursuance to the letter of respondent dated 22.04.2023, the petitioner responded vide reply dated 16.05.2023 and appointed an arbitrator. However, after the learned arbitrator entered upon reference, the respondent moved an application under Section 12 (5) of the Arbitration and Conciliation Act. Pursuant to which, the learned Arbitrator recused from the arbitration vide order dated 23.10.2023. Learned counsel for the petitioner by the present petition is seeking access to the tower. The claim amount of the respondent is around Rs.17,00,000/-.



5. Learned counsel for the respondent submitted that without prejudice to the contentions being raised, the matter may be referred to the Sole Arbitrator.
6. Considering the facts, the present petition is disposed of with the following directions:
 - i) The disputes between the parties under the said agreement are referred to the arbitral tribunal.
 - ii) Mr. Jatan Singh, Advocate, Mobile No.9810041079 is appointed as Sole arbitrator to adjudicate the disputes between the parties.
 - iii) The arbitration will be held under the aegis of the Delhi International Arbitration Centre, Delhi High Court, Sher Shah Road, New Delhi hereinafter, referred to as the 'DIAC'). The remuneration of the learned Arbitrator shall be as per Schedule IV of the Arbitration and Conciliation Act, 1996.
 - iv) The learned Arbitrator is requested to furnish a declaration in terms of Section 12 of the Act prior to entering into the reference.
 - v) It is made clear that all the rights and contentions of the parties, including as to the arbitrability of any of the claim, any other preliminary objection, as well as claims on merits of the dispute of either of the parties, are left open for adjudication by the learned arbitrator.
 - vi) The parties shall approach the learned arbitrator within two weeks from today.



7. The petition is disposed of in the above terms.

DINESH KUMAR SHARMA, J

FEBRUARY 29, 2024

Pallavi