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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **ARB.P. 1353/2023**

MR. SUNIL M NICHANI & ANR. Petitioners
Through: Mr. Divjyot Singh and Mr. Nipun
Dwivedi, Advocates.

versus

MR. PRATAP CHOUDHARY & ORS. Respondents
Through: Mr. Pranav Kumar Srivastava,
Advocate *via* video-conferencing.

CORAM:

HON'BLE MR. JUSTICE ANUP JAIRAM BHAMBHANI

ORDER

16.02.2024

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By way of the present petition under section 11 of the Arbitration & Conciliation Act 1996 ('A&C Act'), the petitioners seek appointment of an arbitrator to adjudicate upon the disputes that are stated to have arisen with the respondents from Business Conducting Agreement dated 06.07.2019 ('Agreement').

2. Notice on this petition was issued on 20.12.2023.
3. Though no reply has been filed to the petition, the court has heard Mr. Pranav Kumar Srivastava, learned counsel appearing for the respondents, whose essential submission is that the Agreement has expired by efflux of time.
4. Mr. Srivastava has also raised certain other objections in relation to the maintainability of the petition for appointment of an arbitrator.
5. On the other hand, Mr. Divjyot Singh, learned counsel for the petitioner argues that in reply dated 04.12.2023, issued on behalf of the respondents to invocation notice dated 06.11.2023, the respondents have in effect admitted the existence of an arbitration



agreement; and have only objected to the appointment of a nominee arbitrator by the petitioners. This, it is pointed-out, is evident from a bare reading of the reply.

6. Mr. Singh has also drawn the attention of this court to clause 10 of the Business Conducting Agreement dated 06.07.2019, which comprises the arbitration agreement; and contemplates reference of disputes between the parties to arbitration in accordance with the A&C Act; with the 'seat' of arbitration being at New Delhi.
7. For completeness, it may be recorded that a separate territorial jurisdiction provision is also contained in clause 10 of the Agreement, which subjects the contract between the parties to the jurisdiction of competent courts at Delhi.
8. As per the record, the petitioner invoked arbitration *vide* Notice dated 06.11.2023; and it transpires that the respondents replied to the said notice *vide* reply dated 04.12.2023.
9. 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 the parties, as set-out *inter-alia* in invocation notice dated 06.11.2023, do not appear *ex-facie* to be non-arbitrable.
10. Accordingly, the present petition is allowed and **Ms. Nina Nariman, Advocate (Cellphone No.: +91 9873755614)** 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.

11. 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.
12. The learned 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.
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 merits, in accordance with law.
14. A copy of this order be communicated *forthwith* to the Co-ordinator, DIAC, for information and compliance.
15. 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.
16. The petition stands disposed-of in the above terms.
17. Pending applications, if any, also stand disposed-of.

ANUP JAIRAM BHAMBHANI, J

FEBRUARY 16, 2024

V.Rawat