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

+ **ARB.P. 1364/2024**

NIKHIL AGARWAL & ORS

.....Petitioners

Through: Mr. Dipesh Sharma and Mr. Mani
Bhadra Jain, Advocates.

versus

VIKASH KUMAR

.....Respondent

Through: Ms. Shweta Priya, Mr. Himanshu
Gupta, Mr. Raghunath Pathak and
Ms. Abhilasha Bhutani, Advocates.

CORAM:

HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

ORDER

21.10.2024

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1. The present petition has been filed under Section 11(6) of the Arbitration and Conciliation Act, 1996 by the Petitioners seeking appointment of an Arbitrator to adjudicate upon the disputes which have arisen between the parties under the Share Purchase Agreement dated 25.11.2022 entered into between the parties. Clause 11 of the said Agreement, which is an arbitration clause, reads as under:

“11. DISPUTI; RESOLUTION

11.1. In case of any dispute the parties shall endeavour to resolve all disputes with written notice of 15 days to the disputing parties. If the disputes are not resolved within 30 days of such notice, then such dispute(s) shall be final, exclusively and conclusively settled by reference to binding arbitration under the Arbitration and Conciliation Act, 1996 as in force at the time of the



Dispute, which rules shall be deemed to be a part of this agreement by reference;

(a) The place of the arbitration proceedings shall be New Delhi.

(b) Purchaser shall appoint one arbitrator and Seller shall appoint the second arbitrator and the arbitrators so appointed shall appoint a third arbitrator (collectively the "Arbitral Tribunal") who shall act as the chairman of the Arbitral Tribunal.

(c) The Parties agree to be bound by (i) any arbitral award or order resulting from any arbitration conducted hereunder; and (ii) any judgement on any arbitral award or order in an arbitration held pursuant to this Article may be entered in any court at Delhi only having jurisdiction in relation thereto.

(d) All proceedings in any such arbitration shall be conducted in English.

(e) The award rendered by the Arbitral Tribunal shall be in writing and shall set out the reasons for their decision. The award shall allocate or apportion the costs of the arbitration as the Arbitral Tribunal deems fair. The Parties agree that the arbitration award shall be final and binding on the Parties.

11.2 When any dispute is under arbitration, except for the matters under dispute, the Parties shall continue to exercise their remaining respective rights and fulfil their remaining respective obligations under this Agreement.



11.3 The provisions of this Article may be enforced in any court at Delhi only having jurisdiction over the award and judgment on the award (including without limitation equitable remedies) granted in any arbitration hereunder may be entered in any such court at Delhi only. Nothing contained in this Article shall prevent any Party from seeking injunctive or other equitable relief from any court of competent jurisdiction at Delhi only, without the need to resort to arbitration, to the extent expressly permitted by this Agreement.

11.5 Each Party shall co-operate in good faith to expedite (to the maximum extent practicable) the conduct of any arbitral proceedings commenced under this Agreement.”

2. Material on record indicates that a notice invoking arbitration under Section 21 of the Arbitration and Conciliation Act, 1996 was sent by the Petitioners to the Respondent on 02.04.2024 and vide letter dated 07.05.2024, the Petitioners appointed Mr. Shwetank Sailakwal to act as a member of the Arbitral Tribunal. Material on record further indicates that the Respondent vide letter dated 07.05.2024 sought some time to respond to the notice sent by the Petitioners invoking arbitration. It is stated that since there was no response from the Respondent, the Petitioners have filed the present petition seeking appointment of an Arbitrator.
3. Learned Counsel appearing for the Parties are *ad idem* that though the Arbitration Clause provides for a three member Arbitral Tribunal, a Sole Arbitrator may be appointed by this Court to adjudicate upon the disputes between the parties.
4. Accordingly, Ms. Sangeeta Bharti, Advocate (Mob. No.9811112863)



is appointed as an Arbitrator to adjudicate upon the disputes between the Parties.

5. The arbitration would take place under the aegis of the Delhi International Arbitration Centre (DIAC) and would abide by its rules and regulations. The learned Arbitrator shall be entitled to fees as per the Schedule of Fees maintained by the DIAC.

6. The learned Arbitrator is also requested to file the requisite disclosure under Section 12(2) of the 1996 Act within a week of entering on reference.

7. All rights and contentions of the parties in relation to the claims/counter-claims are kept open, to be decided by the learned Arbitrator on their merits, in accordance with law.

8. Needless to say, nothing in this order shall be construed as an expression of this Court on the merits of the contentions of the parties.

9. The present petition stands disposed of in the above terms along with pending application(s), if any.

SUBRAMONIUM PRASAD, J

OCTOBER 21, 2024

S. Zakir