



2024:DHC:8404



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

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Date of Decision : 21.10.2024+ **ARB.P. 1389/2024**

MOHINI MALLA

.....Petitioner

Through: Mr. Gurpratap Singh and Mr. Afesh
Kumar, Advs.

versus

NAVGROW CONSTRUCTION PVT. LTD. & ORS.....Respondents

Through: None.

CORAM:**HON'BLE MR. JUSTICE SACHIN DATTA****SACHIN DATTA, J. (Oral)**

1. The present petition has been filed under Section 11 of the Arbitration and Conciliation Act, 1996 (hereinafter '*the A&C Act*') seeking appointment of a sole arbitrator for adjudicating the disputes between the parties.
2. The disputes between the parties have arisen in context of a collaboration agreement dated 16.03.2020 with respect to the redevelopment of the subject property at Land bearing no. B-2, Pamposh Enclave, New Delhi, 110048 for the construction of a building comprising of basement, stilt floor and from ground to third floor with terrace to be carried out by the respondents for a sum of Rs. 93,50,000/- (Rupees ninety three lakhs and fifty thousand only).
3. Clause 50 of the collaboration agreement contains an arbitration clause, which provides as under :-

"50. That if any dispute arises between the parties regarding any matter concerning herewith, the same shall at the first instance be mutually



resolved by the parties. In case such dispute is not resolved within 15 days from receipt of written notice (setting out the dispute or claim) by the other party, the complaining party may issue a notice or reference, invoking settlement of such dispute through arbitration of a sole arbitrator; who shall be mutually appointed by both the parties. The provisions of Arbitration and Conciliation Act, 1996, shall apply to such proceedings. The place of arbitration shall be at New Delhi. The arbitration proceedings shall be conducted in English language. The award of the arbitrator shall be final and binding on the parties."

4. The petitioner sent a letter dated 06.08.2024 under Clause 50 of the aforesaid Collaboration Agreement calling upon the respondent to amicably resolve the dispute. A reply dated 12.08.2024 was sent by the respondent no.3, which made several allegations, while also agreeing to make efforts to resolve the matter. However, no amicable resolution could fructify.
5. Consequently, the petitioner sent a notice dated 23.08.2024 under Section 21 of the A&C Act invoking arbitration for adjudication of the disputes between the parties and suggested the name of a person who could be appointed as the Sole Arbitrator. The respondent in its reply dated 24.08.2024, while not disputing the existence of the arbitration agreement, suggested an alternative person. In the circumstances, the parties have failed to mutually agree upon a Sole Arbitrator. Hence, the present petition.
6. None appears for the respondent despite notice being issued by this Court on 09.09.2024. An affidavit of service has been filed by the petitioner wherein it has been brought out that the respondents have been duly served by email.
7. Since the existence of the arbitration agreement is evident from a perusal of the agreement dated 16.03.2020, there is no impediment to constituting an Arbitral Tribunal to adjudicate the disputes between the parties. Further, as contemplated in *Interplay Between Arbitration*



Agreements under A&C Act, 1996 & Stamp Act, 1899, In re, (2024) 6 SCC1, it is incumbent on this Court to appoint an independent Sole Arbitrator to adjudicate the disputes between the parties, since the parties have mutually failed to agree on a sole arbitrator. It has been observed in ***Interplay*** (supra) as under:-

“150. Section 11 of the Arbitration Act deals with the appointment of arbitrators. It recognises the autonomy of the parties to agree upon a procedure for appointment of an arbitrator or arbitrators. Section 11 requires the intervention of the Court only when there is a deadlock or failure of the parties to follow the appointment procedure. In the process, Section 11 is meant to give effect to the mutual intention of the parties to settle their disputes by arbitration in situations where the parties fail to appoint an arbitrator or arbitrators. In an arbitration with three arbitrators, each party is required to appoint one arbitrator each, and subsequently the two arbitrators will appoint the third arbitrator. Section 11(6) confers powers on the Supreme Court and the High Court, as the case may be, on the failure of the parties to comply with the agreed arbitration procedure. Section 11(6) enlists three possible defects in the appointment procedure, namely : first, a party fails to act as required by the agreed procedure; second, the parties or the two appointed arbitrators fail to reach an agreement expected of them under that procedure; or third, a person, including an institution, fails to perform any function entrusted to them or under the agreed procedure.”

8. Accordingly, Ms. Ekta Kapil, Advocate (Mob. No. +91 9958097425) is appointed as the Sole Arbitrator to adjudicate the disputes between the parties.

9. The learned Sole Arbitrator may proceed with the arbitration 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.

10. The learned Sole Arbitrator shall be entitled to fee in accordance with



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IVth Schedule to the A&C Act; or as may otherwise be agreed to between the parties and the learned Sole Arbitrator.

11. Parties shall share the arbitrator's fee and arbitral costs, equally.
12. 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.
13. Needless to say, nothing in this order shall be construed as an expression of this court on the merits of the case.
14. The present petition stands disposed of in the above terms.

SACHIN DATTA, J

OCTOBER 21, 2024/dn