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IN THE HIGH COURT OF DELHI AT NEW DELHI

ARB.P. 312/2010

LUMINOUS POWER TECHNOLOGIES

..... Petitioner

Through : Mr. Sanjay Goswami, Adv.

versus

NARESH KUMAR

..... Respondent

Through : Mr. Naresh Khanna, Adv.

CORAM:**HON'BLE MR. JUSTICE G.S.SISTANI****ORDER****23.11.2011**

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1. This is a petition under Section 11(5) of Arbitration and Conciliation Act, 1996, seeking appointment of sole Arbitrator to decide disputes and differences which have arisen between the parties, subject matter of the Rent Agreement dated 29.10.2007 entered into between the parties.
2. Learned counsel for the petitioner submits that parties had entered into a Rent Agreement on 29.10.2007, by which it was agreed between the parties that respondent herein would carry out construction over a plot of land measuring, 3000 sq. yards, situated in the revenue estate of Village Mundka, Delhi, and would rent out the same to the petitioner herein for a lock in period of three years at an agreed rent of Rs.2.40 lakhs. per month. As per the said Rent Agreement, respondent herein was to construct godown as per the

approved designs and specifications by the petitioner herein together with installation of power connection, supply of municipal water and borewell. Possession of the land was to be handed over by the respondent to the plaintiff latest by 1.4.2006. Further the petitioner was to deposit interest free advance and security, in the sum of Rs.14.00 lakhs, with the respondent, out of which, Rs.6.00 lakhs was to be adjusted in the rent.

3. As per Clause 16 of the rent agreement, in case any dispute between the parties, both the parties were to appoint an Arbitrator, who would settle the disputes arising between them. Clause 16 of the rent agreement reads as under:

"16 That if any dispute arises between the party regarding the terms and conditions of this agreement in that case both the parties will appoint an arbitrator, who will settle the dispute and whose decision will be final and binding on both the parties."

4. Learned counsel for the petitioner submits that pursuant to the Rent Agreement dated 29.10.2007 between the parties, the petitioner paid a sum of Rs.2.00 lakhs to respondent on 8.11.2007 vide Cheque no.394154 dated 6.1.2007, drawn on Corporation Bank; Rs.3.00 lakhs on 22.12.2007 vide Cheque no.394200 dated 21.12.2007, drawn on Corporation Bank; Rs.3.00 lakhs on 30.1.2008 vide Cheque no.417367 dated 29.1.2008, drawn on Corporation Bank; Rs.3.00 lakhs on 18.2.2008 vide Cheque no.417485 dated 16.2.2006, drawn on Corporation Bank; and Rs.2.00 lakhs on 30.6.2008 vide Cheque no.28.6.2008, drawn on Corporation Bank. Copies of

receipts have been placed on record. Counsel further submits that despite receipt of the said amounts the respondent did not hand over possession of the said land. The petitioner thereafter issued a legal notice to the respondent on 23.8.2010, which was replied to by the respondent vide communication dated 12.10.2010. Copies of notice dated 23.8.2010 and reply dated 12.10.2010 have been placed on record. Counsel in the above circumstances prays for appointment of a sole Arbitrator to settle all disputes and differences, which have arisen between the parties.

5. Learned counsel for the respondent has opposed the present petition primarily on the ground that respondent was made to sign the rent agreement dated 29.10.2007 without explaining the contents thereof. Counsel further submits that since the respondent was not aware of the contents of the Rent Agreement the petitioner cannot rely on the terms and conditions of the agreement including the Arbitration Clause. The second leg of the argument of counsel for the respondent is that a mere reading of the Rent Agreement would show that the same was signed by one, Sqdn. Ldr. S.K. Sharma (Retd.), in his personal capacity. Counsel next submits that there was no Resolution of the Board in favour of Sqdn. Ldr. S.K. Sharma (Retd.) authorizing him to enter into the said Rent Agreement and since the said Rent Agreement was executed by Sqdn. Ldr. S.K. Sharma (Retd.) in his personal capacity, present petition is not maintainable as the same has been filed by M/s Luminous Power Technologies Pvt Ltd. (petitioner herein)

6. It is submitted by learned counsel for the respondent that Sqdn. Ldr.

S.K. Sharma (Retd.) would not fall in the definition as per Section 2(b) of Arbitration and Conciliation Act. Learned counsel for the respondent in support of his submission has relied upon a decision rendered by a Division Bench of this Court in the case of ***M.M. Aqua Technologies Ltd. v. WIG Brothers Builders & Another***, reported at 95 (2002) DLT 818 (DB), wherein it has been held that disputes between the parties, who are not the parties to the Arbitration Agreement, cannot be referred to Arbitration. Counsel for the respondent has relied upon the observations made by the Division Bench in para 3, which reads as under:

"..... Neither the same can be inferred by implication nor an Arbitrator can be appointed for the purpose of determining the disputes between the parties, who are not parties to the arbitration agreement. Learned Single Judge found that in fact that the petitioner herein had also earlier filed a suit against the second respondent herein "

7. Learned counsel for the respondent has also relied in the case of ***ITC Classic Finance Ltd. v. Grapco Mining and Co. Ltd.***, reported at AIR 1997 CALCUTTA 397, more particularly the concluding portion, wherein the Court has held as under:

"The second petitioner has not signed the aforesaid lease agreements containing the said arbitration clause and as such the said petitioner cannot enforce the arbitration agreement "

8. In response to the submissions made by learned counsel for the respondent, counsel for the petitioner submits that the stand taken by

the respondent is baseless and dishonest and an afterthought. Counsel for the respondent further submits that all payments which stand acknowledged by the respondent were made by M/s Luminous Power Technologies Private Limited, petitioner herein. Counsel next submits that recital of the Rent Agreement itself would show that Sqdn. Ldr. S.K. Sharma (Retd.) has acted as an employee of the petitioner herein and further at no point of time the respondent had raised any question that petitioner herein had not entered into a Rent Agreement with the respondent. Elaborating his argument further counsel for the petitioner submits that legal notice dated 23.10.2010 was issued at the instruction of petitioner company herein and in his reply the respondent did not raise any objection with regard to the issue that the said Rent Agreement was signed by Sqdn. Ldr. S.K. Sharma (Retd.) in his personal capacity or that petitioner herein was not a party in the said Rent Agreement. Counsel next submits that reading of the reply to the legal notice would make it abundantly clear that respondent had recognized the Sqdn. Ldr. S.K. Sharma (Retd.) the signatory of the agreement, which contains the Arbitration Clause. Counsel also submits that even otherwise it is for petitioner herein to take the objection that this Rent Agreement would be voidable at the instance of petitioner herein and Sqdn. Ldr. S.K. Sharma (Retd.) did not have the authority or the mandate to enter into the said Rent Agreement.

9. Learned counsel for the petitioner submits that the argument raised by learned counsel for the respondent that respondent was forced and coerced to sign the said Rent Agreement is without any basis and

this objection can be decided by the Arbitrator. Counsel for the petitioner has relied upon a decision rendered by the Supreme Court in the case of **Meguin GMBH & Co. v Nandan Petrochem Ltd.**, reported at 2007 (5) R.A.J. 239 (SC), wherein the Apex Court has held that even questions of fraud can be adjudicated upon by the Arbitrator. Counsel for the petitioner has relied upon para 2 of this judgment, which reads as under:

“2 In its counter affidavit, the respondent inter alia has alleged fraud. In my considered view, the question as to whether the entire contract is vitiated by reason of alleged commission of any fraud on the part of either of the parties thereto, the matter can be gone into by the arbitrator. Even the question as to the jurisdiction of the arbitrator can be gone into by the arbitral tribunal itself. In this view of the matter, I do not see any reason why an arbitrator shall not be appointed in terms of the arbitration agreement of the parties by this court in exercise of its jurisdiction under Section 11(6) of the Act.”

10. I have heard counsel for the parties and also perused the petition, the Rent Agreement dated 29.10.2007 and the documents filed along with the present petition. The Rent Agreement dated 29.10.2007, sought to be relied upon, by the petitioner contains an Arbitration Clause. The said Rent Agreement has been signed by Sqdn Ldr. S.K. Sharma (Retd.) on behalf of the petitioner and Mr. Naresh Kumar, respondent herein. The question as to whether Mr. Naresh Kumar was forced and coerced to sign the said Rent Agreement without explaining its contents is kept open to be decided by the learned Arbitrator as held in the case of **Meguin GMBH & CO.** (supra). As far as the second objection raised by learned counsel for the

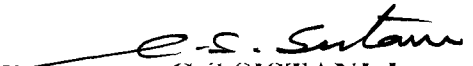
respondent is concerned there is no quarrel to the proposition that only such disputes can be referred to an Arbitrator which form part of an Agreement, which is signed by the parties. The observations made in the judgments relied upon by counsel for the respondent are with respect to those matters where the agreements were not signed at all by the parties, who had sought reference of dispute to an Arbitrator. To say that petitioner herein has not signed the Arbitration Agreement in my view cannot be accepted firstly on the ground that this is an objection, which should have been taken by the respondent at the first opportunity available as the cheques were admittedly issued by the petitioner herein, which were duly accepted and encashed by the respondent. Secondly, present petition has been signed and supported by the affidavit of Sqdn. Ldr. S.K. Sharma (Retd.), who is the signatory of the Rent Agreement containing the Arbitration Clause. Legal notice was issued at the instance of the petitioner herein. In response to the said legal notice the respondent has not raised any objection that there was no agreement signed by the petitioner herein or that Sqdn. Ldr. S.K. Sharma (Retd.) had signed the Rent Agreement in his personal capacity. To my mind the objections, sought to be raised, is without any basis and is only to be rejected.

4. Accordingly, present petition is allowed. Mr. Bharat Bhushan, Additional District Judge (Retd.), (Cell No 9899285640) is appointed as a Sole Arbitrator to adjudicate upon all disputes and differences including claims and counter claims arising between the parties. It is agreed between the parties that fee of the Arbitrator shall be borne by

the parties equally as per the schedule maintained by Delhi High Court Arbitration Centre.

12. Petition stands disposed of.

13. Let a copy of this order be sent directly to learned Arbitrator.


G.S.SISTANI, J

NOVEMBER 23, 2011

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