

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

Judgement Reserved on: **4<sup>th</sup> August, 2014.**  
Judgement pronounced on: **21<sup>st</sup> August, 2014.**

..... Petitioners

versus

Through : Mr. Amit Kumar, Adv.

**HON'BLE MS. JUSTICE DEEPA SHARMA**

## JUDGMENT

1. The present petition has been filed under Section 11(6) of the Arbitration and Conciliation Act, 1996 for appointment of an Arbitrator.
2. It is submitted by the petitioner that he, Ashok Khanna, is the Proprietor of M/s Anshu Fire Protection having its office at 71, SCF-II, Sector 16 A, opposite Government College, Faridabad. The respondent had awarded work order to carry out the various items of fire fighting works at Indoor Stadium for badminton and squash Courts at Siri Fort Sports Complex, which was constructed for Commonwealth games, 2010, vide letter dated 20<sup>th</sup> October, 2008.

3. The work order was accepted by the petitioner and subsequently an agreement dated 27<sup>th</sup> January, 2009 was executed between the parties. The petitioner carried out the work and raised the bills of Rs.57,69,305 which is outstanding.

4. Several E-Mails dated 28<sup>th</sup> October, 2010 and 3<sup>rd</sup> January, 2011 and 28<sup>th</sup> October, 2013 and 13<sup>th</sup> November, 2013 were exchanged between the parties but payment was not released. The petitioner had requested the respondent to set up a meeting with the Chairman in terms of Clause 15 of the agreement which the respondent failed to do. The petitioner filed an arbitration petition in this court bearing No. 515/2013 which was dismissed as withdrawn on 26<sup>th</sup> November, 2013 requiring the petitioner to take the requisite steps in terms of Clause 15 of the agreement. A notice dated 26<sup>th</sup> November, 2013 was sent by the petitioner through his counsel invoking the arbitration and informing the respondent about the appointment of Sh. S.K. Mahajan, retired Justice of Delhi High Court as an arbitrator to adjudicate the disputes giving the respondent seven days time to raise objection to the appointment of Arbitrator but the response of the respondent was not positive, hence the petition.

5. The main objection of the respondent is that there was no agreement of any nature between the respondent and the petitioner. It is submitted that the respondent had entered into an agreement with the company called M/s Anshu Fire Protection, a company incorporated under the Companies Act, 1956 vide Agreement dated 27<sup>th</sup> January, 2009.

6. It is contended that the petitioner is a stranger to the said agreement and has no locus standi to file the present petition.

7. Learned counsel for the petitioner has argued that there is no dispute to the fact that the respondent had entered into an agreement with M/s Anshu Fire Protection, a company registered under the Companies Act, but actually it was a proprietorship firm of the name of M/s Anshu Fire Protection of which he is the Proprietor and hence he has the locus standi. It is also argued that in several E-Mails, the respondent has not disputed this fact. It is also submitted that in reply to their notice dated 26<sup>th</sup> November, 2013 which was sent by the Advocate of the petitioner, this issue was not raised by the respondent.

8. It is argued on behalf of the respondent that these various E-mails were exchanged between Anshul Khanna of M/s Anshu Fire Protection, the Company and the respondent. It is submitted that reply to the notice of the petitioner dated 26<sup>th</sup> November, 2013 does not amount to creating a contract with the petitioner.

9. I have given careful consideration to the rival contentions of the parties.

10. Section 11 of the Arbitration and Conciliation Act, 1996 confers jurisdiction to Courts to appoint an Arbitrator. In the case of ***Deutsche Post Bank Home Finance Limited v. Taduri Sridhar and Another (2011) 11 SCC 375***, the Supreme Court has discussed the meaning of the expression

“the party” which appears under Section 11(6) and the expression “the agreement” under Section 7 and Section 2(b) of the Act and has held as under:-

*“18. The existence of an arbitration agreement between the parties to the petition under section 11 of the Act and existence of dispute/s to be referred to arbitration are conditions precedent for appointing an Arbitrator under section 11 of the Act. A dispute can be said to arise only when one party to the arbitration agreement makes or asserts a claim/demand against the other party to the arbitration agreement and the other party refuses/denies such claim or demand. If a party to an arbitration agreement, files a petition under section 11 of the Act impleading the other party to the arbitration agreement as also a non-party to the arbitration agreement as respondents, and the court merely appoints an Arbitrator without deleting or excluding the non-party, the effect would be that all parties to the petition under section 11 of the Act (including the non-party to arbitration agreement) will be parties to the arbitration. That will be contrary to the contract and the law. If a person who is not a party to the arbitration agreement is impleaded as a party to*

*the petition under section 11 of the Act, the court should either delete such party from the array of parties, or when appointing an Arbitrator make it clear that the Arbitrator is appointed only to decide the disputes between the parties to the arbitration agreement.*

*19. The arbitration agreement relied upon by the first respondent to seek appointment of arbitrator, is clause (7) of the construction agreement dated 21.2.2008. The appellant was not a party to the said construction agreement dated 21.2.2008 containing the arbitration agreement. It is no doubt true that the loan agreement dated 21.12.2006 between the first respondent as borrower, and the appellant as the creditor, also contains an arbitration clause (vide Clause 11) providing for resolution of disputes in regard to the said loan agreement by arbitration. But the developer was not a party to the loan agreement. There is no arbitration agreement between the developer and the appellant. The disputes between the first respondent and the developer cannot be arbitrated under Clause 11 of the Loan Agreement. The first respondent invoked the arbitration agreement contained in clause 7 of the*

*construction agreement (between the first respondent and the developer) and not the arbitration agreement contained in clause 11 of the loan agreement (between the appellant and the first respondent). The existence of an arbitration agreement in a contract between appellant and the first respondent, will not enable the first respondent to implead the appellant as a party to an arbitration in regard to his disputes with the developer”.*

11. From the above discussion, it is therefore, apparent that the law requires that only a person who is a party to an agreement can invoke the jurisdiction of this court under Section 11(6) of the Arbitration and Conciliation Act, 1996 for the appointment of an arbitrator. A stranger to the arbitration agreement cannot approach the court under Section 11(6) of the Arbitration and Conciliation Act, 1996. The petitioner in this case has filed on record, the agreement dated 27<sup>st</sup> January, 2009 while invoking the arbitration clause and seeking the intervention of this court under Section 11 (6) of the Act for appointment of an Arbitrator. The para 1 of the said agreement reads as under:-

***“AGREEMENT***

***This Agreement is executed on this 27<sup>th</sup> day of January 2009 between B.E. Billimoria & Company Limited a company incorporated***

*under the companies Act, 1956 having its registered office at Shiv Sagar Estate, 'A'Block, 2<sup>nd</sup> floor, Dr. Annie Besant Road, Worli, Mumbai-400 018 (hereinafter referred to as BEBL which expression(s) shall unless repugnant to the context, mean and include its successors-in-interest, executors and assigns) of the first part and Anshu Fire Protection, a company incorporated under the Companies Act, 1956 having its Head Office at 71 SCF-II, Sector 16-A, Behind Hotel Magpie, Faridabad-121007, Haryana(hereinafter referred to as AFP which expression(s) shall unless repugnant to the context, mean and include its successors-in-interest, executors and assign(s) of the second part.”*

12. This agreement further shows that the Signatories to this agreement is Mr. Anshul Khanna for M/s Anshu Fire Protection. The petitioner is not a Signatory to this agreement. He has only signed this agreement as a witness to the execution of this document. Moreover, the agreement itself shows that the agreement was between Anshu Fire Protection, a company incorporated under the Companies Act, 1956 and not for M/s Anshu Fire Protection, a Proprietorship concern. This observation that the agreement was between M/s Anshu Fire Protection, a company incorporated under The Companies Act is further strengthened from the fact that a notice dated 18<sup>th</sup> November, 2013 under Section 433 (e) and 434 of The Companies Act, 1956 for

winding up the company had been issued by M/s Anshu Fire Protection.

13. Since the petitioner is not “A Party” to the agreement dated 27<sup>th</sup> January, 2009 and he, therefore, cannot move this court under Section 11(6) of the Arbitration and Conciliation Act, 1996 for appointment of an Arbitrator claiming that a dispute has arisen under the agreement. The petitioner, therefore, has no locus standi to approach this court, for want of legal relationship with the respondent.

14. In view of above discussion, the petition is hereby dismissed.

**DEEPA SHARMA**  
**(JUDGE)**

**AUGUST 21, 2014**  
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