$~
* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
3.
\+ **ARB.P. 340/2015**

NK GOLD MEDALLION PVT. LTD. ..... Petitioner
Through: Mr. Kirti Uppal, Senior Advocate with Mr. Rajesh Sharma and Mr. Harsh Kumar, Advocates.

versus

CORPORATION BANK ..... Respondent
Through: Mr. Ajant Kumar, Advocate.

CORAM: JUSTICE S. MURALIDHAR

O R D E R
% **07.11.2016**

1. This is a petition under Section 11 (6) of the Arbitration and Conciliation Act 1996 ('Act') seeking the appointment of an Arbitrator for resolution of the disputes arising out of a Bullion Agreement dated 9th December, 2004 which, admittedly, contains an arbitration clause.

2. The background to the present petition is set out succinctly in the legal notice issued by the Petitioner to the Respondent Corporation Bank, Shalimar Bagh Branch, New Delhi on 17th April, 2015. The Petitioner was earlier a partnership firm named M/s. Gupta & Co. The aforementioned Bullion Agreement was entered into by Gupta & Co. with the Respondent for the purchase of gold. The specific clause in the Bullion Agreement which is relied upon by the Petitioner reads as under:

> "The customer may, from time to time to purchase

> bullion from the Bank out of the consignment stock of bullion held by the Bank either on fixed price basis or on 'unfixed price basis or both and/or may request the Bank to import bullion .on outright basis, either on fixed price basis or on unfixed price basis, and sell the same to the customer after the bullion is cleared from customs."

3. As already noted, the aforementioned agreement also contains an arbitration clause.

4. It is not in dispute that independent of the above Bullion Agreement, there have also been 'gold loans' obtained by the Petitioner from the Respondent Bank under a Gold Loan Agreement (GLA). There is no arbitration clause as far as the GLA is concerned. It is also not in dispute that in relation to the outstanding amount owed by the Petitioner to the Respondent under the GLA, proceedings have been initiated before the Debt Recovery Tribunal ('DRT') to which both the Petitioner and the Respondent are parties. The said proceedings before the DRT are pending.

5. It is in the above circumstances that an objection has been raised by Mr. Ajant Kumar, learned counsel for the Respondent to the reference of the disputes, as claimed by the Petitioner, to arbitration since, according to the Respondent, the only dispute between the parties concerns the repayment of the gold loan. It is pointed out that the import of gold by the Respondent Bank under the Bullion Agreement was to facilitate the repayment of the gold loan. It is, accordingly, contended that since both the issues are inter-connected, the question of a separate reference of the disputes concerning the purported import of gold under the Bullion Agreement to arbitration

does not arise. Reliance is placed *inter alia* on the decision of the Supreme Court in ***Sukanya Holdings Pvt. Ltd. v. Jayesh H. Pandya AIR 2000 SC 2252*** to urge that the subject matter of the dispute would mean that the entire subject matter and bifurcation of causes of action cannot be permitted.

6. Mr. Kirti Uppal, learned Senior counsel appearing for the Petitioner, on the other hand, refers to the fact that the claim of the Petitioner arises from the action of bank in charging customs duty on the gold which were never in fact imported and sold to the Petitioner in terms of the Bullion Agreement. According to Mr. Uppal, the Respondent Bank admitted that it had no stock of gold during the relevant time even according to its stock register and this itself showed that the raising of invoices and charging of customs duty on gold was entirely without any basis. He further clarifies that any claim that the Respondent Bank may have against the Petitioner under the GLA can be pursued by the Bank before the DRT since the Petitioner is also participating in those proceedings and it is not seeking to bring within the ambit of the arbitration proceedings any claim which is pending before the DRT.

7. Having considered the above submissions, the Court is of the view that the present dispute that is raised by the Petitioner, of which it seeks reference to arbitration, arises under the Bullion Agreement between the parties. It also appears to the Court that the Respondent Bank has accepted the change in the composition of the erstwhile partnership firm of M/s. Gupta & Co. which has been reconstituted as the present Petitioner i.e., N.K. Gold Medallion Pvt. Ltd. and that the facilities available to M/s. Gupta & Co. were extended by the Respondent Bank to its successor-in-interest i.e.,

the Petitioner herein. Therefore, the objection raised on behalf of the Respondent Bank that it has no privity of contract with the Petitioner and, therefore, the Petitioner cannot seek reference of the disputes with it to arbitration is hereby rejected.

8. It also appears that the question of the Bank charging and collecting customs duty from the Petitioner is an issue that arises only under the Bullion Agreement. While it is true that the import of gold by the Bank under the Bullion Agreement was to facilitate the Petitioner repaying the gold loan, the issue whether customs duty was rightly charged by the Bank is one arising only under the Bullion Agreement. Since in the present petition, disputes as identified by the Petitioner concern only this aspect, viz., the charging of customs duty from the Petitioner, there should be no difficulty in referring this dispute to arbitration since that is consistent with what has been agreed between the parties in the Bullion Agreement.

9. It is clarified that the reference of the dispute between the parties to arbitration arising from the Bullion Agreement will in no manner affect the continuation of the proceedings before the DRT. It is possible that both these disputes can be adjudicated simultaneously. In the event that the Petitioner ultimately succeeds in the arbitral proceedings and any amount is found due and payable by the Respondent to the Petitioner, that can certainly be adjusted against any amount that will be found by the DRT to be due by the Petitioner to the Respondent. In that view of the matter, this Court does not see any impediment if the disputes between the parties arising out of the Bullion Agreement are referred to arbitration.

10. It may be noted that in terms of the arbitration clause in the Bullion Agreement, the venue of the arbitration would be a “city/town where branch of the Bank is situated.” The branch of the Respondent Bank is at Shalimar Bagh, New Delhi and, therefore, the venue of the arbitration is New Delhi.

11. The Court, accordingly, appoints Justice Anil Kumar (Mob. No. 9818000140), a former Judge of this Court, as sole Arbitrator to adjudicate the disputes between the parties including their claims and counter-claims. The arbitration shall take place under the aegis of the Delhi International Arbitration Centre (‘DAC’). The fees of the learned Arbitrator will be in terms of the Delhi High Court Arbitration Centre (Arbitrators’ Fees) Rules.

12. The petition is disposed of. A copy of this order be communicated to the learned Arbitrator as well as Additional Coordinator, DAC forthwith.

S. MURALIDHAR, J

NOVEMBER 07, 2016
dn