

\$~

*

IN THE HIGH COURT OF DELHI AT NEW DELHI

2

+

ARB.P. 694/2015

KSHITIJ ENTERPRISES

..... Petitioner

Through: Mr. Puneet Bhatnagar with Ms. Richa S.
Bhatnagar and Ms. Ritu, Advocates.

versus

**WARANA DAIRY & AGRO INDUSTRIES LTD
& ANR**

..... Respondents

Through: Mr. Anshuman Animesh with Mr. Nipun
Katyal, Advocates for R-1.

CORAM: JUSTICE S.MURALIDHAR

ORDER

%

15.12.2016

1. This is a petition under Section 11 (6) of the Arbitration and Conciliation Act, 1996 ('Act') filed by the Petitioner, Kshitij Enterprises, seeking the appointment of an Arbitrator to adjudicate the disputes between the Petitioner and Respondent No. 1, Warana Dairy & Agro Industries Limited arising out of an agreement dated 15th July 2011.

2. The said agreement was entered into between Respondent No. 1 and the Petitioner appointing the Petitioner as consignee agent for selling of its milk and milk products, juices, mineral water manufactured by Respondent No. 1 in Delhi & New Delhi.

3. Clauses 18 and 19 of the said Agreement read as under:

“18. That the disputes and differences of any kind what so ever arising out of or in connection with this agreement between the parties to the agreement shall be subject to the jurisdiction of KOLHAPUR.

19 That in case of any dispute or difference or questions arises between the parties touching the construction, meaning or effect of this Agreement or any cause or thing herein contained or the rights or obligations of the parties hereto or their respective successors or assigns or any of them under this agreement or otherwise howsoever in relation to this agreement, shall be referred two Arbitrators, one is to be appointed by each party, who shall appoint third Arbitrator, who shall act as presiding Arbitrator and the provisions of Arbitration and Conciliation Act. 1996 and any statutory modifications thereof shall apply to such arbitration. The award of the arbitrator shall be final binding on the parties.

Presiding Arbitrator, and the provisions of Arbitration and Conciliation Act, 1996 and any statutory modifications thereof shall apply to such arbitration. The award of the arbitrator shall be final and binding on the parties.”

4. According to the Petitioner, for the obligations performed by it under the said Agreement, Respondent No.1 owed it Rs.19,52,383.85 together with interest @ 18% per annum. A demand notice to that effect was sent by the Petitioner to Respondent No.1 on 15th September 2014. In response thereto, the Petitioner received a cheque for a sum of Rs. 2,37,662 from the Respondent No.1. It is stated that the claim for balance should be referred to the sole arbitration.

5. A reply has been filed by Respondent No.1 raising an objection to the present petition on the ground that the agreement in question was not executed in Delhi but at Warana in Maharashtra where the registered office of Respondent No. 1 is situated. Secondly, it is pointed out that in terms of

Clause 18 of the Agreement, the jurisdiction is of the Courts in Kolhapur and therefore, this Court ought not to entertain the present petition.

6. It appears to the Court that even though the agreement is stated to have been executed in Warana Nagar no part of cause of action as far as the claim of the Petitioner against the Respondents is concerned can be said to have arisen within the jurisdiction of the Court in Kolhapur. The contract was to be performed in Delhi. The payments owing to the Petitioner were received in part in Delhi. Further, Clause 18 does not confer exclusive jurisdiction on the Courts of the Kolhapur. In other words there is no intention of the parties to exclude the jurisdiction of the Courts in Delhi. Clause 19 in any event does not fix the jurisdiction vis-a-vis the place of arbitration.

7. For the above reasons, the objections of the Respondents are hereby negatived.

8. As regards the merits, the question whether the Petitioner is entitled to the claim will be decided in the arbitral proceedings.

9. Accordingly, the Court appoints Ms. Mini Puhsarna, Advocate (Mobile No. 9810674872) as a 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 Arbitration Centre (Arbitrators' Fees) Rules.

10. The petition is disposed of in the above terms. A copy of this order be

communicated to the learned Arbitrator as well as Additional Coordinator,
DAC forthwith.

S. MURALIDHAR, J

DECEMBER 15, 2016

Rm