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

+ **ARB.P. 151/2017**

SHAKTI BHOG FOODS LIIMITED..... Petitioner

Through Mr.Abhishek Sharma and Mr.Sunav
Rastogi, Advs.

versus

SUSHIL TRADING COMPANY Respondent

Through Mr.Zakir Hussain and Mr. Sanjay
Dua, Advs.

CORAM:

HON'BLE MR. JUSTICE JAYANT NATH

ORDER

07.07.2017

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1. The present petition is filed under Section 11(6) of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as the Act) for appointment of an arbitrator.
2. Some of the relevant brief facts are that on 08.11.2014, an agreement for storage and warehouse was executed between the parties. The agreement was to commence w.e.f. 17.11.2014. The petitioner claims to have paid a sum of Rs.10 lakhs to the respondent 01.04.2015, another Rs.10 lakhs on 08.04.2015 and Rs.9 lakhs on 04.09.2015.
3. The disputes having arisen between the parties, the petitioner is said to have sent a notice dated 23.09.2016 invoking the arbitration clause in the Agreement dated 08.11.2014 and sought consent of the respondent for appointment of a sole arbitrator. As there was no response, the present

petition has been filed.

4. After service of notice, on 02.05.2017 learned counsel for the respondent entered appearance and sought time to take instructions.

5. Today learned counsel for the respondent has made two submissions. He firstly submits that as per the arbitration agreement, the parties were to first sit and try to resolve the disputes. This dispute resolution procedure having not been adopted by the petitioner, it is urged that the stage for reference of disputes to arbitration has not arisen. Secondly, it is denied that any notice was served on the respondent. Hence, it is urged that there are no referable disputes to arbitration. He has further urged that there are several FIRs filed against the petitioner and the petitioner are not paying the dues of the respondent and hence, the respondent cannot be burdened with the costs of arbitration. It is urged that the cost of arbitration should be paid by the petitioner.

6. A perusal of the agreement between the parties dated 08.11.2014 would show that Clause 14 is the relevant arbitration clause. The said clause reads as follows:-

“14: Any dispute arising out of or in connection with the Agreement including any question regarding the existence, validity or termination, which the parties are unable to resolve within 15 days from the date of arising of the dispute, shall be finally settled in accordance with the Arbitration and Conciliation Act, 1996. The venue of Arbitration shall be at New Delhi.

7. Hence, the disputes that may arise regarding the agreement which the parties are unable to resolve within 15 days of arising of the disputes have to be referred to arbitration. There is no reference to any conciliation

procedure. In the present case, the petitioner have issued a notice on 23.09.2016. This itself is an indication of a dispute between the parties. Further the respondent have entered appearance on 02.05.2017. Thereafter also, there has been no reconciliation of disputes between the parties. It is clear that the parties have been unable to resolve their disputes.

8. As far as the plea of the respondent that they have not received the copy of the notice is concerned, learned counsel for the petitioner has filed in court a copy of the postal receipt by which the notice has been sent. The postal receipt shows dispatch of the communication on 23.09.2016 by registered post. The copy of the postal receipt filed by the petitioner may be scanned by the Registry and placed on record. Hence, it can be concluded that the notice has been despatched.

9. In the light of the above, the disputes having arisen between the parties in terms of the arbitration clause in the agreement, an arbitrator is to be appointed.

10. Accordingly, I appoint Mr.Amar Nath (Retd. District & Sessions Judge) (Mobile No.: 9958697030) as the sole arbitration to adjudicate the disputes between the parties. The learned Arbitrator will fix his fees in consultation with the learned counsel for the parties. The learned Arbitrator may also comply with provisions of Section 12(1) of the Act.

11. Parties to appear before the learned Arbitrator on 08.08.2017 at 4.00 P.M.

12. The petition stands disposed of.

JAYANT NATH, J

JULY 07, 2017/rb