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

+ **ARB.P. 811/2016**

OK PLAY INDIA LIMITED & ANR.

..... Petitioners

Through: Mr Anirudh Wadhwa and Mr Hires Choudhary, Advocates.

versus

DHL LOGISTICS PRIVATE LIMITED

..... Respondent

Through: Mr Amit Dayal, Advocate.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER

% **12.04.2017**

1. The petitioners have filed the present petition under Section 11 of the Arbitration and Conciliation Act, 1996 (hereafter 'the Act'), *inter alia*, praying that an Arbitrator be appointed to adjudicate the disputes that have arisen between the parties in relation to shipment of certain goods from Poland.

2. The standard terms of the contract includes an arbitration clause, which reads as under:-

“ARBITRATION

Any difference or dispute arising out of or in relation to anything contained in these Standard Trading Conditions shall be referred to an arbitration panel consisting of three arbitrators. One arbitrator shall be appointed by each party and the third arbitrator shall be appointed by those two arbitrators. The award of all or a majority of the arbitrator

shall be binding on the parties. The arbitration shall be conducted in accordance with the Arbitration and Conciliation Act, 1996 or any statutory modification or re-enactment thereof and the venue for arbitration shall be at Mumbai.”

3. The learned counsel appearing for the petitioners states that the parties are bound to refer the disputes to arbitration, however, the venue of the arbitration cannot be Mumbai as the entire cause of action has arisen in Delhi as well as in Madras.

4. He further states that the standard terms of the contract are in the nature of offer and although the petitioners had accepted the arbitration agreement, they had never accepted that the arbitration be conducted at Mumbai. He further submits that such clause is onerous and unconscionable.

5. The learned counsel for the respondent countered the aforesaid submissions.

6. It is seen that the standard terms also includes a clause, whereby it is specified that, subject to the arbitration clause, the exclusive jurisdiction regarding the subject matter would vest with the Courts at Mumbai. The said clause reads as under:-

“JURISDICTION AND LAW

Any dispute arising out of any act or contract to which these conditions apply shall be subject to the laws of India. Subject to the Arbitration clause below, the parties hereby unconditionally submit to the exclusive jurisdiction of the Courts at Mumbai.”

7. However, the learned counsel for the respondent does not dispute that this Court would have the jurisdiction to entertain the present petition. He states that although the venue of the arbitration may be at Mumbai, the seat of arbitration would be Delhi. In view of the aforesaid statement, it is not necessary for this Court to examine the question whether this Court has jurisdiction to entertain the present petition.

8. Insofar as the arbitration clause is concerned, the contention that petitioners only accepted a part of the clause is unpersuasive and cannot be accepted. The contention that the venue of the arbitration at Mumbai is onerous is also not acceptable.

9. In the aforesaid circumstances, it is apparent that the disputes between the parties are to be resolved by arbitration to be held at Mumbai. The parties would be at liberty to shift the venue, by consent, to any other place as may be convenient.

10. The learned counsel for the petitioners states that the claim in any event is less than ₹50 lacs and requests that instead of an arbitral tribunal of three members, a sole arbitrator be appointed. The learned counsel for the respondent also states on instructions that the respondent would be willing to accept an arbitral tribunal of a single member.

11. In view of the above, as suggested by the counsel, Mr Abhinav Chandrachud, Advocate (Mobile No. + 91 7506641199), 3rd Floor, Mulla House, 51 Mahatma Gandhi Road, Fort Mumbai, Maharashtra – 400001, is appointed as a Sole Arbitrator to adjudicate the disputes between the parties. This is subject to the Arbitrator making the necessary disclosure under

Section 12(1) of the Act and not being ineligible under Section 12(5) of the Act. The parties are at liberty to approach the Arbitrator for eliciting necessary disclosure and for further proceedings.

12. The petition is disposed of.

VIBHU BAKHRU, J

APRIL 12, 2017
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