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

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Date of Decision: 05.12.2018

+ CS(COMM) 415/2017

PIONEER POLYLEATHERS LTD Plaintiff

Through Mr.Devender Kr.Saini and
Ms.Chhaya Sharma, Advs.

versus

M/S COMPER PRODUCTS COMPANY AND OTHERS..Defendant

Through Mr.Sumit Kumar, Mr.T.K.Tiwari and
Ms.Supriya, Advs.

CORAM:

HON'BLE MR. JUSTICE JAYANT NATH

JAYANT NATH, J. (Oral)

IA No.1031/2018

1. This application is filed by the defendant under section 8 of the Arbitration and Conciliation Act praying that the parties may be referred to arbitration. Reference has been made to the Agreement between the parties dated 23.1.2013 which contains an arbitration clause. It is pleaded that in terms of the arbitration clause the matter may be referred to arbitration.

2. I have heard learned counsel for the parties. Learned counsel for the plaintiff has opposed the present application. He submits that the defendants vide a letter dated 8.1.2016 acknowledged their dues for a sum of Rs.2,46,89,431/-. He submits that the matter has been settled between the

parties in view of this acknowledgement and no further dispute survives for adjudication. Hence, he submits that the matter cannot be referred to arbitration. Learned counsel for the defendant denies the submission of the plaintiff.

3. Section 8 of the Arbitration Act reads as follows:-

8. Power to refer parties to arbitration where there is an arbitration agreement.—

“1) A judicial authority, before which an action is brought in a matter which is the subject of an arbitration agreement shall, if a party to the arbitration agreement or any person claiming through or under him, so applies not later than the date of submitting his first statement on the substance of the dispute, then, notwithstanding any judgment, decree or order of the Supreme Court or any Court, refer the parties to arbitration unless it finds that prima facie no valid arbitration agreement exists. ;

(2) The application referred to in sub-section (1) shall not be entertained unless it is accompanied by the original arbitration agreement or a duly certified copy thereof.

Provided that where the original arbitration agreement or a certified copy thereof is not available with the party applying for reference to arbitration under sub-section (1), and the said agreement or certified copy is retained by the other party to that agreement, then, the party so applying shall file such application along with a copy of the arbitration agreement and a petition praying the Court to call upon the other party to produce the original arbitration agreement or its duly certified copy before that Court. .

(3) Notwithstanding that an application has been made under sub-section (1) and that the issue is pending before the judicial authority, an arbitration may be commenced or continued and an arbitral award made.”

4. Clause H of the agreement between the parties read as follows:-

“H) Arbitration:-

42) All disputes, differences and/or claims arising out of this Agreement may be settled by Arbitration in accordance with the provisions of Arbitration and Conciliation Act, 1996 or any statutory modification or amendment thereof. .

43) All such disputes, differences and claims may be referred to a sole Arbitrator who shall be appointed by the PIONEER.

44) CS agrees and accepts the procedure of nomination of the sole Arbitrator by PIONEER.

45) The Arbitration proceedings shall be held at New Delhi.

46) The cost of the arbitration shall be shared equally between the parties.

47) The award of the Arbitrator shall be final and binding on both the parties.”

5. Coming to the communication dated 8.1.2016 the same is a letter written by the defendant to the plaintiff confirming the outstanding dues. The payment schedule has also been given in the said letter. In my opinion, prima facie it appears that the above communication is at best an acknowledgement of the debt and cannot be said to lead to any modification of the original agreement dated 23.1.2013 between the parties.

6. In this context reference maybe had to the judgement of the Supreme Court in *A.Ayyasamy vs. A.Paramasivam and Others.*, (2016) 10 SCC 386 which elaborated the powers of the court to refer the parties to arbitration under section 8 of the Arbitration and Conciliation Act. The court held as follows:-

“32. The Arbitration and Conciliation Act, 1996 does not in specific terms exclude any category of disputes—civil or commercial—from arbitrability. Intrinsic legislative material is

in fact to the contrary. Section 8 contains a mandate that where an action is brought before a judicial authority in a matter which is the subject of an arbitration agreement, the parties shall be referred by it to arbitration, if a party to or a person claiming through a party to the arbitration agreement applies not later than the date of submitting the first statement on the substance of the dispute. The only exception is where the authority finds prima facie that there is no valid arbitration agreement. Section 8 contains a positive mandate and obligates the judicial authority to refer parties to arbitration in terms of the arbitration agreement. While dispensing with the element of judicial discretion, the statute imposes an affirmative obligation on every judicial authority to hold down parties to the terms of the agreement entered into between them to refer disputes to arbitration. Article 8 of the Uncitral Model Law enabled a court to decline to refer parties to arbitration if it is found that the arbitration agreement is null and void, inoperative or incapable of being performed. Section 8 of the 1996 Act has made a departure which is indicative of the wide reach and ambit of the statutory mandate. Section 8 uses the expansive expression “judicial authority” rather than “court” and the words “unless it finds that the agreement is null and void, inoperative and incapable of being performed” do not find place in Section 8.”

7. Hence, the above section mandates that a judicial Authority refers the parties to arbitration other than a matter where the Authority prima facie finds that there is no valid arbitration agreement. In the facts of this case, no such prima facie finding can be recorded. Prima facie clear from Clause H of the said agreement that there exist a valid arbitration agreement between the parties.

8. Liberty is granted to the plaintiff to take steps for appointment of an Arbitrator within 30 days from today in terms of the Arbitration clause. In case the plaintiff fails to do the needful the defendant is free to take steps as

per law for appointment of the Arbitrator.

9. Present suit stands disposed of.

10. As the matter has been decreed under section 89 CPC the plaintiff shall be entitled to refund of the Court Fees.

JAYANT NATH, J

DECEMBER 05, 2018

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